



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR. JUSTICE V.S.RAVI

H.C.P. (MD) No.1230 of 2015

Shanmugathai

.. Petitioner

Vs.

1.The State of Tamil Nadu
rep.by its Principal Secretary to Government,
Home Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

.. Respondents

Prayer : Petition under Article 226 of the Constitution of India, praying to call for the records relating to the detention order passed by the 2nd respondent in M.H.S.Confdl.No.84/2015 dated 23.7.2015 and quash the same and direct the respondents to produce the detenu Thiru.Vel @ Isravel son of John Pandian, male aged 33 years who is detained at Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.R.Pon Karthikeyan
For Respondents : Mr.A.Ramar
Addl.Public Prosecutor

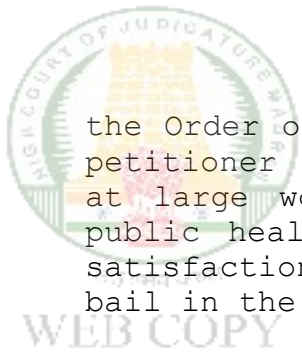
O R D E R

(Order of the Court was made by **P.R.SHIVAKUMAR.,J.**)

The petitioner is the mother of the detenu. The detenu was detained by the second respondent by his order in M.H.S.Confdl No.84/2015 dated 23.07.2015, holding him to be a "Boot-legger", as contemplated under Section 2(b) of the Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.109 of 2015 on the file of Pappakudi Police Station for alleged offences punishable under Sections 4(1)(aaa) and 4(1)(A) of Tamil Nadu Prohibition Act and Sections 468, 471, 476 of the Indian Penal Code.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Detaining Authority viz., the second respondent, clamped



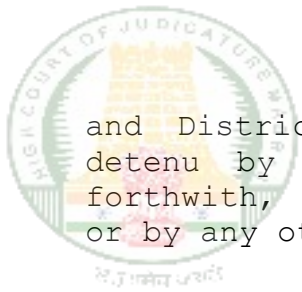
the Order of Detention, after expressing subjective satisfaction that the petitioner conformed to the definition of "bootlegger", as his presence at large would be prejudicial to the maintenance of public order and public health. The Detaining Authority has also expressed a subjective satisfaction that there was imminent possibility of his coming out on bail in the ground case.

3. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the Detaining Authority clamped the order of detention mechanically and without application of mind, insofar as the Detaining Authority, while exercising subjective satisfaction of the detenu coming out on bail, has referred to multiple cases rather than a single case viz., ground case, in which alone he was arrested and remanded. The relevant portion in the grounds of detention reads as follows:

"I am aware that Thiru.Vel alias Isreal is in remand in Pappakudi Police Station Crime Number 109/2015 and in this case he filed a bail petition before the Sessions Court, Tirunelveli, in CRMP No.4418 of 2015 on 14.07.2015 and the bail petition is yet to be disposed. I am also aware that he is very likely to come out on bail in that case. I am also aware that in this case bail has been granted to Thiru.Vel alias Isreal's associate Esakki in CRMP No.4108/2015 dated 08.07.2015 by the Sessions Court, Tirunelveli. I therefore infer that there is very likely of his (Thiru.Vel alias Isreal) coming out on bail in Pappakudi Police Station Crime Number 109/2015, since bails are granted by the appropriate courts in such cases."

4. The learned Additional Public Prosecutor has made a meek attempt to contend that it is only a typographical error which should not be given weight. On the other hand, the learned counsel for the petitioner would submit that the order being one passed depriving a person of his liberty without trial, utmost care should have been taken by the Detaining Authority. It is the further contention of the learned counsel for the petitioner that failure to note even the alleged typographical error which refers to more than one case will show non application of mind on the part of the Detaining Authority and the subjective satisfaction shall be termed *ipse dixit*.

5. We are satisfied with the above said contention of the learned counsel for the petitioner and we hold that the subjective satisfaction regarding imminent possibility of the detenu coming out on bail in the ground case is nothing but an *ipse dixit* expressed in a casual way and in a routine manner. On that ground alone, the order of detention is liable to be set aside, holding it to be vitiated.



and District Magistrate, Tirunelveli and directs the release of the detenu by name Vel @ Isreal S/o. John Pandian, male aged 33 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

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/True Copy/

Sd/-

Assistant Registrar (Per.Admn)

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department
Fort. St. George, Chennai - 600 009
2. The District Collector and District Magistrate
Tirunelveli District, Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Superintendent, Central prison,
Palayamkottai. (In Duplicate for communication to Tentenu)
5. The Joint Secretary to Government,
Public (Law and Order) Fort, st. George, Chennai-9

+1CC to Mr. R. Ponkarthikeyan Advocate Sr. No. 65987

GJM/MP/PM/14.12.2015-3P-8C

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