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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **09.12.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **P.R.SHIVAKUMAR**

and

THE HONOURABLE MR.JUSTICE **V.S.RAVI**

H.C.P (MD) No.1340 of 2015

S.Kalaiselvi

.. Petitioner

Vs.

- 1.The State of Tamil Nadu, rep by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Central Prison,
Central Prison, Trichirappalli. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records in detention order passed in C.O.C.No.59 of 2015, dated 03.09.2015, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband, namely Sukkuru @ Subramaniyan, S/o.Perumal, male aged about 46 years, who is now detained in Central Prison, Trichirappalli, before this Court and set him at liberty forthwith.

For petitioner
For Respondents

: Mr.K.A.S.Prabhu
: Mr.A.Ramar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **P.R.SHIVAKUMAR, J.**]

The petitioner is the wife of the detenu. The detenu has been detained by the second respondent by his Detention Order in C.O.C.No.59 of 2015, dated 03.09.2015, holding him to be a "Boot-Legger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.176 of 2015 registered on the file of Thirukkuvalai Police Station for offences punishable under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A)



TNP Act 1937 and following two adverse cases:-

(i). Crime No.414 of 2015 registered on the file of Nagapattinam PEW for offences punishable under Sections 4(1)(aaa), r/w 4(1-A) TNP Act 1937 ; and

(ii) Crime No.585 of 2015 registered on the file of Nagapattinam PEW for offences punishable under Sections 4(1)(aaa) r/w 4(1-A) TNP Act 1937;

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of Boot-Legger and that his presence at large would be prejudicial to the maintenance of public order and public health and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3. Though a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the following contentions:-

(i). There is non-application of mind on the part of the Detaining Authority insofar as the Detaining Authority, while expressing the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case, made an observation that there was a real and imminent possibility of the detenu coming out on bail by filing a bail petition before the Higher Court, whereas the earlier part of the observation shows that as on the date of the order of detention, the bail petition filed in CrI.M.P.No.2234 of 2015, on the file of the learned Sessions Judge, Nagapattinam was pending.

ii. Though the Detaining Authority expressed the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case, there was failure on the part of the Detaining Authority to express the subjective satisfaction regarding the possibility of the detenu coming out on bail in the second adverse case, in which he was remanded and bail petition filed by him before the learned Judicial Magistrate No.II, Nagapattinam, had also been dismissed, as noted in the tabular column.

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. Insofar as the first contention is concerned, in Paragraph No.5 of the grounds of detention, the Detaining Authority referred to the pendency of the bail petition filed before the learned Sessions Judge, Nagapattinam in the ground case. However, the Detaining Authority proceeded further to state that **there was real and imminent possibility of the detenu coming**



out on bail in the ground case by filing a bail petition for the above case before the Higher Court, as if no bail petition was pending.

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6. For better appreciation, the relevant part of Paragraph No.5 of the detention order is re-produced hereunder:-

"5. I am aware that Thiru.Sukkuru @ Subramaniyan, male aged 46/2015, S/o.Perumal, was produced before the learned Judicial Magistrate Court No.II, Nagapattinam, on 19.08.2015 and remanded in District Jail, Nagapattinam, as a remand prisoner on the same day itself. His remand period expired on 02.09.2015 and further his remand period was extended upto 10.09.2015. I am aware that Thiru.Sukkuru @ Subramaniyan, Male, aged 46/2015, S/o.Perumal is in remand in connection with the case in Thirukuvalai Police Station in Crime No.176 of 2015. I am aware that he had moved a bail petition before the learned Judicial Magistrate Court No.II, Nagapattinam, in Cr.M.P.No.2579 of 2015 in connection with the above case and the same was dismissed by the learned Judicial Magistrate Court No.II, Nagapattinam, on 24.08.2015. Further bail petition filed before the Sessions Judge, Nagapattinam, was pending in 2234 of 2015, dated 27.08.2015. Further, in his own First adverse case in Nagapattinam Police Prohibition Enforcement Wing, Cr.NO.414 of 2014, u/w 4(1)(aaa) r/w 4(1-A) TNP Act 1937, Thiru Sukkuru @ Subramaniyan, Male aged 46/2015, S/o.Peruam, was arrested and remanded on 28.05.2015 and later released on bail by the District and Sessions Court, Nagapattinam, in Cr.M.P.No.1306 of 2015, on 06.06.2015. Hence, I am satisfied that there is real and imminent possibility of [Thiru.Sukkuru @ Subramaniyan, Male aged 46/2015, S/o.Perumal] coming out on bail by filing a bail application for the above case before the Higher Court".

7. A perusal of the same will show that the learned counsel for the petitioner is right in contending that there was non-application of mind on the part of the Detaining Authority and the subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case is not based on cogent reasons and is only a *ipse dixit*. On that ground, the order of detention is liable to be set aside.



8. Insofar as the second contention is concerned, in Paragraph No.I in the tabular column, against the second adverse case, namely, Crime No.585 of 2015 on the file of Nagapattinam PEW registered for offences punishable under Sections 4(1)(aaa) r/w 4 (1-A) TNP Act 1937, it has been noted that he was remanded in the said case up to 10.09.2015 and his bail petition in Crl.M.P.No.2733 of 2015 filed before the learned Judicial Magistrate No.II, Nagapattinam, was also dismissed. However, the Detaining Authority has not chosen to advert to the said fact and express the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the second adverse case. The omission on the part of the Detaining Authority will make the order of detention vitiated insofar as there is absence of consideration of a relevant material as to the necessity of the clamping of the order of detention while the detenu was in judicial remand. Hence, on both the grounds, the order of detention is liable to be set aside.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 03.09.2015, made in C.O.C.No.59 of 2015, by the second respondent, the District Collector and District Magistrate, Nagapattinam District, Nagapattinam and directs the release of the detenu, by name Sukkuru @ Subramaniyan, S/o.Perumal, aged about 46 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent of Central Prison,
Central Prison, Trichirappalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.A.S.PRABHU, Advocate Sr.No. 70904

NB

AA/SKS-RR/17.12.2015/4p-6c