



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2015

CORAM:

WEB COPY

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

H.C.P(MD)No.1391 of 2015

(In the matter of detenu Easuraja, husband of the petitioner herein)

Victoria

: Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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

: Respondents

PRAYER: Petition filed under Article 226 of constitution of India praying to issue a WRIT OF HABEAS CORPUS or any other appropriate writ, order or direction in the nature of writ, calling for the records relating to the Detention order passed by the 2nd respondent made in his proceedings in C.O.C. NO.63/2015 dated 19.09.2015 in detaining the detenu under section 2 (b) Tamilnadu Act 14 of 1982 as a BOOT LEGGER and quash the same and direct the respondents to produce to detenu namely Easuraja s/o. chinnappan, Male Aged about 34 years Who is detained in Central prison, Thiruchirappalli, before this Honourable Court and set him at liberty.

For Petitioner	: Mr.K.M.Karunakaran
For Respondents	: Mr.A.Ramar
	Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu. The detenu was detained by the second respondent by his order in C.O.C.No.63/2015 dated 19.09.2015, 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.832 of 2015 on the file of Sirkazhi Prohibition Enforcement Wing registered for offences punishable under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) of TNP Act, 1937 and following five adverse cases:-

(i) Crime No.29 of 2015 registered on the file of



Poraiyur Police Station for an offence punishable under Section 4(1)(aaa) TNP Act, 1937;

(ii) Crime No.198 of 2015 registered on the file of Poraiyur Police Station for an offence punishable under Section 4(1)(aaa) of TNP Act, 1937;

(iii) Crime No.300 of 2015 registered on the file of Poraiyur Police Station for an offence punishable under Section 4(1)(aaa) of TNP Act, 1937;

(iv) Crime No.512 of 2015 registered on the file of Poraiyur Police Station for an offence punishable under Section 4(1)(aaa) of TNP Act, 1937; and

(v) Crime No.545 of 2015 registered on the file of Poraiyur Police Station for an offence punishable under Section 4(1)(aaa) of 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 the order of detention is assailed on several grounds, the learned counsel for the petitioner relies on the contention that the Detaining Authority observed in the grounds of detention in para 6 that there is real and imminent possibility of the detenu coming out on bail by filing a bail application for the ground case before the Higher Court despite the earlier observation that the bail petition filed by the detenu in Cr.M.P.No.2391 of 2015 was pending in the court of the Sessions Judge, Nagapattinam and that hence the same will show non-application of mind on the part of the Detaining Authority in making his expression of subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case.

4. We have heard the submissions made by Mr.A.Ramar, learned Additional Public Prosecutor on behalf of the said submissions made by the learned counsel for the petitioner. The submissions, thus, made by the learned Additional Public Prosecutor are also taken into consideration.

5. In paragraph 5 of the grounds of detention, the detaining authority observed as follows:

"I am aware that Thiru Easuraja, Male, Aged 34/2015, S/o.Chinnappan was produced before the learned Judicial Magistrate Court No.II, Mayiladuthurai on 04.09.2015 and remanded in Sub-Jail, Mayiladuthurai as a remand prisoner on the same day itself. His remand period expired on 18.09.2015 and further his remand period was extended upto 01.10.2015. I am aware that Thiru.Easuraja, Male, Aged 34/2015, S/o.Chinnappan is in remand in connection with the case in Sirkazhi Prohibition Enforcement Wing Cr.No.832 of 2015. I am



aware that he had moved a bail petition before the learned Judicial Magistrate Court No.II, Mayiladuthurai in Cr.M.P.No.3567 of 2015 in connection with the above case and the same was dismissed by the learned Judicial Magistrate Court No.II, Mayiladuthurai on 07.09.2015. Further bail petition filed before the Sessions Judge, Nagapattinam was pending in Cr.M.P.No.2391 of 2015, dated 14.09.2015. Further in his own first adverse case in Poraiyar Police Station Crime No.29 of 2015 under Section 4(1)(aaa) TNP Act, 1937 Thiru.Easuraja, Male, Aged 34/2015, S/o.Chinnappan was arrested and remanded on 11.01.2015 and later released on bail by the Judicial Magistrate Court No.II, Mayiladuthurai in Cr.M.P.No.169 of 2015 on 20.01.2015. Hence, I am satisfied that there is a real and imminent possibility of (Thiru.Easuraja, Male, Aged 34/2015, S/o. Chinnappan) coming out on bail by filing a bail application for the above case before the Higher Court. If he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order and public health."

A perusal of the same will show that the detaining authority referred to the pendency of the bail petition in Cr.M.P.No.2391 of 2015 before the Sessions Judge, Nagapattinam in respect of the ground case, viz. Crime No.832 of 2015 on the file of Sirkazhi Prohibition Enforcement Wing, but proceeded further observe that there was real possibility of the detenu coming out on bail in the said case by filing bail petition in the Higher Court as if no bail application was pending. It may even imply that the detaining authority came to a pre-conclusion that the bail petition pending before the Sessions Judge would be dismissed. The Same would show non-application of mind on the part of the Detaining Authority. On that ground, the Habeas Corpus Petition is bound to be allowed and the order of detention is liable to be interfered with and set aside.

6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, made in C.O.C.No.63/2015 dated 19.09.2015, by the second respondent, the District Collector and District Magistrate, Office of the District Collector and District Magistrate, Nagapattinam, Nagapattinam and directs the release of the detenu by name Easuraja S/o Chinnappan, aged about 34 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (AE)

/True Copy/

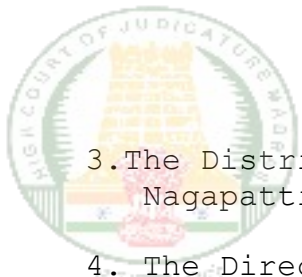
Sub Assistant Registrar

CM

To

1. The District and Sessions Judge, Nagapattinam

2. The Secretary to the Government,
<https://hcservices.ecourts.gov.in/hcservices/>
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.



3. The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.

4. The Director General of Police, Thanjavur District

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

6. The Superintendent - Central prison, Trichy.
(Induplicate for communication to Dentenu)

7. The Joint Secretary to Government of Tamilnadu,
Public (Law & Order) Fort St. George, Chennai -9

+1CC to Mr. K. M. Karunakaran Advocate S.No. 72078

GJM/GSV/AN/31.12.2015-4P-10C

Order made in
H.C.P (MD) No. 1391 of 2015
Dated:- 16.12.2015