



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.04.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P.(MD)No.140 of 2015

Arif @ Quarter .. Petitioner

Vs.

- 1.The Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector & District Magistrate,
O/o.District Collector & District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District. .. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for entire records pertaining to the detention order passed by the 2nd respondent in M.H.S.Confdl No.05/2015 dated 10.01.2015 and quash the same as illegal and direct the respondents to produce the detenu namely Arif @ Quarter S/o.Rahim, aged 29 years now detained in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.C.Ramesh

Addl.Public Prosecutor

ORDER

(Order of the Court was made by A.SELVAM, J.)

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to call for records pertaining to the detention order passed in M.H.S.Confdl No.05/2015 dated 10.01.2015 by the detaining authority who has



been arrayed as second respondent herein against the detenu by name Arif @ Quarter S/o.Rahim and quash the same and thereby set him at liberty forthwith.

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2. The Inspector of Police, Alangulam Police Station as sponsoring authority has submitted an affidavit to the detaining authority, wherein it is stated that on 04.12.2014 within the jurisdiction of Alangulam Police Station, the detenu and another are found in possession of illicit arrack and due to that a case has been registered in against them in Crime No.646 of 2014 under Sections 4(1)(aaa), 4(1-A) of Tamilnadu Prohibition Act, altered to Sections 4(1)(aaa), 4(1-A) r/w 7 of Tamilnadu rectified Sprit Rule, 2000 and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

3. The detaining authority after considering the gravity of offence alleged to have been committed by the detenu has branded him as 'bootlegger' by way of passing the impugned detention order and in order to quash the same, the present Habeas Corpus Petition has been filed by the detenu himself as petitioner.

4. On the side of the respondents counter has been filed, wherein it has been contended to the effect that all the averments made in the petition are false and ultimately prayed to dismiss the same.

5. The learned counsel appearing for the petitioner has contended that the detaining authority has relied upon a bail order passed in Cr.M.P.No.1993 of 2008 dated 21.02.2008 by the Judicial Magistrate Court, Tenkasi and in fact the circumstances mentioned therein are not identical to the facts and circumstances of the present case and therefore, the detaining authority has not applied his mind properly in passing the detention order and on that ground, the same is liable to be quashed.

6. The learned Additional Public Prosecutor has contended that the detaining authority after considering the gravity of offence alleged to have been committed by the detenu and also after considering the fact that in a similar case in Cr.M.P.No.1993 of 2008 bail has been granted by the Judicial Magistrate, Tenkasi, has rightly passed the detention order and therefore, the same does not call for any interference.

7. Basing upon the divergent submissions made on either side, the learned Judge has analysed the order passed in Cr.M.P.No.1993 of 2008 dated 21.02.2008 by the Judicial Magistrate court, Tenkasi and ultimately found that Cr.M.P.No.1993 of 2008 has



been filed under Section 167(2) of the Code of Criminal Procedure, 1973 for getting default bail. The Judicial Magistrate, Tenkasi after considering the fact that no final report has been filed by the prosecuting agency within the stipulated period, has granted bail on the basis of section 167 (2) of the Code of Criminal Procedure, 1973. Since in Cr.M.P.No.1993 of 2008 only statutory bail has been granted, whereas, the circumstances mentioned in the present case are totally different, it is needless to say that the similar case particulars relied upon by the detaining authority is totally erroneous and in fact, the detaining authority has not applied his mind properly in passing the detention order in question and therefore, the same is liable to be quashed.

9. In fine, this Habeas Corpus Petition is allowed and the detention order dated 10.01.2015 passed in M.H.S.Confdl No.05/2015 by the detaining authority/second respondent herein is quashed and the petitioner/detenu is ordered to be set at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector & District Magistrate,
O/o.District Collector & District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Joint Secretary to Government,
Public(Law and Order), Department,
Fort St.George, Chennai-9

+1cc to Mr.R.Alagumani,Advocate Sr.No.24202

mj

AA/04.05.2015/3p- 7c/

H.C.P. (MD) No.140 of 2015
30.04.2015