



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2015

CORAM:

WEB COPY

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

H.C.P(MD)No.1410 of 2015

Pandiammal .. Petitioner

Vs.

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat, 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 Prison,
Trichy Central Prison, Trichy District. .. 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 connected with the detention order of the second respondent in C.O.C.No.61 of 2015, dated 18.09.2015 and quash the same and direct the respondents to produce the detenu namely Pathu @ Padmanaban, S/o.Kuttappan, aged about 67 years, detained in Trichy Central Prison, before this Court and set him at liberty forthwith.

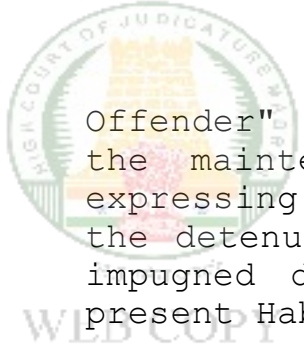
For petitioner	: Mr.R.Alagumani
For Respondents	: Mr.A.Ramar
	Additional Public Prosecutor

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 has been detained by the second respondent by his order in C.O.C.No.61 of 2015, dated 18.09.2015, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.232 of 2015 registered on the file of Thalainayar Police Station for offences punishable under Sections 328 and 304(ii) of the Indian Penal Code.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Drug



Offender" 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 contention that there was non-application of mind on the part of the Detaining Authority insofar as the Detaining Authority referred to the fact that a bail application filed on behalf of the detenu was pending, but still went on further to add that there was possibility of a bail application being filed in an appropriate Court and coming out on bail.

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. For better appreciation, the relevant portion of the grounds of detention in Paragraph No.5 is re-produced hereunder:-

"I am aware that Thiru.Pathu @ Padmanaban, male aged 67/2015, S/o.Kuttappan, was produced before the learned District Munsif-cum-Judicial Magistrate, Vedaraniyam on 19.08.2015 and remanded in Central Prison, Trichirappalli as a remand prisoner on the same day itself. His remand period was expired on 31.08.2015 and was further extended upto 14.09.2015 and was further extended upto 28.09.2015. I am also aware that Thiru.Pathu @ Padmanaban, male aged 67/2015, S/o.Kuttappan is in remand in Thalainayar Police Station Cr.No.232 of 2015. I am aware that he had moved a bail petition before the learned District Munsif-cum-Judicial Magistrate, Vedaraniyam in Cr.M.P.No.4350 of 2015 in connection with the above case and the same was dismissed by the learned District Munsif-cum-Judicial Magistrate, Vedaraniyam on 21.08.2015. Further bail petition filed before the Sessions Judge, Nagapattinam was pending in Cr.MP.No.2279 of 2015, dated 02.09.2015. Hence, I infer that there is real possibility of his [Thiru.Pathu @ Padmanaban, male aged 67/2015, S/o.Kuttappan,] coming out on bail by filing a bail application for the above case before the appropriate Court and higher Court".

6. As rightly, contended by the learned counsel for the petitioner, the above extracted portion of the grounds of detention is based on non-application of mind and mechanical clamping of the order of detention. Hence, on the said ground alone, the order of detention is liable to be set aside.



7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 18.09.2015, made in C.O.C.No.61 of 2015, passed by the second respondent, the District Collector and District Magistrate, Nagapattinam District and directs the release of the detenu, by name Pathu @ Padmanaban, aged about 67 years, S/o.Kuttappan forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

NB

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat, 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 Prison,
Trichy Central Prison, Trichy District.
4. The Joint Secretary to Government,
Public (Law and order),
Fort Saint George, Chennai-9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

GJM/GSV/AN/1.2.16-3p-6c

ORDER MADE IN
H.C.P (MD) No.1410 of 2015
21.12.2015