



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.04.2015

Coram

THE HONOURABLE MR.JUSTICE A.SELVAM
and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P. (MD) No.145 of 2015

Selvi

.. Petitioner

Vs.

1.The State of Tamilnadu,
Rep.by Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George
Secretariat, Chennai - 9.

2.The District Collector & District Magistrate,
O/o.District Collector & District Magistrate,
Nagapattinam.

3.The Superintendant of Prison,
Borstal School and District Jail,
Pudukottai 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 impugned detention order passed by the 2nd respondent in C.O.C.No.03/2015 dated 09.01.2015 and quash the same and direct the respondents to produce the detenu namely Charless S/o.Thavamani aged about 20 years, detained as 'bootlegger' and lodged in Borstal school and District Jail, Pudukottai 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 relating to the detention order passed in C.O.C.No.03/2015 dated 09.01.2015 by the detaining authority who has been arrayed as second respondent herein against the detenu by name Charless S/o.Thavamani and quash the same and thereby set him at liberty forthwith.

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

2. The Inspector of Police, Kilvelur Police Station as sponsoring authority has submitted an affidavit to the detaining



authority, wherein it is stated that the detenu has involved in the following adverse cases:

(i) Crime No.536 of 2014, Kilvelur Police Station registered under Sections 4(1)(aaa)r/w 4(1-A) of TNP Act, 1937 (Transport).

(ii) Crime No.546 of 2014, Kilvelur Police Station registered under Sections 4(1)(aaa)r/w 4(1-A) of TNP Act, 1937.

(iii) Crime No.551 of 2014, Kilvelur Police Station registered under Sections 4(1)(aaa) of TNP Act, 1937.

Further it is stated in the affidavit that on 22.12.2014 the sponsoring authority and others have found the detenu in possession of 110 liters of illicit arrack in a mud pot, capacity of 120 liters and ultimately registered a case in Crime No.578 of 2014 under Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A) of Tamilnadu Prohibition Act, 1937 and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

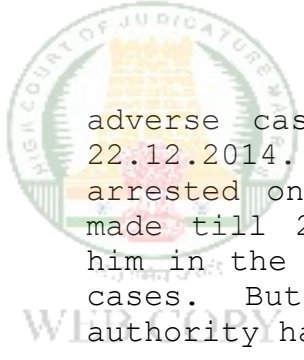
3. The detaining authority after considering the averments made in the affidavit and other connected documents has derived subjective satisfaction to the effect that the detenu is a 'habitual offender' and ultimately branded him as 'bootlegger' by way of passing the impugned detention order and in order to quash the same, the present Habeas Corpus Petition has been filed by the mother of the detenu as petitioner.

4. On the side of the respondents a detailed 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 against the detenu three adverse cases are pending and admittedly only in ground case the detenu has been arrested on 22.12.2014. But the sponsoring authority without arresting the detenu on that date itself in respect of adverse cases, he made a formal arrest on 05.01.2015 and the said irregularity has not been looked into by the detaining authority and further the detaining authority has relied upon similar case particulars on the basis of bail order passed in Cr.M.P.No.1030 of 2013 by the District and Sessions Court, Nagapattinam and in fact, the facts mentioned therein are not similar to that of the facts of the present case. Under the said circumstances, the detaining authority has not properly applied his mind and therefore, the detention order in question is liable to be quashed.

6. The learned Additional Public Prosecutor has contended that even though three adverse cases are pending on the date of registering ground case, the sponsoring authority has made formal arrest on 05.01.2015 in respect of ground case and the same has not affected interest of the detenu and further the detaining authority has properly relied upon similar case particulars and therefore, the detention order in question does not call for any interference.

7. With regard to first point urged on the side of the petitioner, it is seen from the records that against the detenu three



adverse cases are pending on the date of registering ground case on 22.12.2014. Further it is seen from the records that the detenu has been arrested on 22.12.2014. In respect of adverse cases no arrest has been made till 22.12.2014. But the sponsoring authority has simply arrested him in the ground case and not arrested him in respect of three adverse cases. But the material irregularity committed by the sponsoring authority has not at all been looked into by the detaining authority.

8. Further in the order passed in Cr.M.P.No.1030 of 2013 by the District and Sessions Court, Nagapattinam it is mentioned that the Public Prosecutor has no objection. In fact, the District and Sessions Judge, Nagapattinam has passed bail order in Cr.M.P.No.1030 of 2013 only on the basis of representation made by the Public Prosecutor and that itself cannot be considered as similar case. The detaining authority has not applied his mind in relying upon similar case particulars on the basis of the order passed in Cr.M.P.No.1030 of 2013. Therefore, viewing from any angle, the detaining authority has not properly applied his mind in passing the impugned detention order and that itself would be sufficient to quash the detention order.

9. In fine, this Habeas Corpus Petition is allowed and the detention order dated 09.01.2015 passed in C.O.C.No.03/2015 by the detaining authority/second respondent herein is quashed and the detenu by name Charless is ordered to be set at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(Writs)

\\True copy\\

Sub Assistant Registrar

To

1. THE SECRETARY TO GOVERNMENT HOME, PROHIBITION AND EXCISE DEPARTMENT,
STATE OF TAMILNADU, SECRETARIAT, FORT ST. GEORGE, CHENNAI.
2. THE DISTRICT COLELCTOR AND DISTRICT MAGISTRATE, NAGAPATTINAM.
3. THE SUPERINTENDENT OF PRISON BORSTAL SCHOOL AND DISTRIC TJAIL,
PUDUKOTTAI DISTRICT. (IN DUPLICATE FOR COMMUNICATE TO THE DETENUE)
4. THE JOINT SECRETARY TO GOVT. PUBLIC(LAW & ORDER) FORT ST.GEORGE,
CHENNAI-9
5. THE INSPECTOR OF POLICE,KILVELUR POLICE STATION,
- 6.THE ADDL.PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1cc TO MR.R.ALAGUMANI, ADVOCATE SR.NO.21587

H.C.P. (MD) No.145 of 2015
22.04.2015