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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1581 of 2015

Gnanapushpam

.. Petitioner/Wife of Detenu

Vs.

The State rep by

1.The Secretary to 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 the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the respondent No.2 in C.O.C.No.73/2015 dated 05.11.2015 in detaining the detenu under the Tamil Nadu Act 14 of 1982 as a BOOT LEGGER and quash the same and direct the respondents to produce the body or person of the detenu by name Irudayasamy S/o.Mariyasusai aged about 57 years, now detained at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

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.73/2015 dated 05.11.2015, 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.581 of 2015 on the file of Anaikkaranchathiram Police Station registered for offences punishable under Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A) TNP Act, 1937 and the following five adverse cases:-

(i) Crime No.200 of 2014 registered on the file of Anaikkaranchathiram Police Station for an offence punishable under Section 4(1)(k) of TNP Act, 1937;

<https://mcservices.courts.gov.in/mcservices/>

(ii) Crime No.437 of 2014 registered on the file of Anaikkaranchathiram Police Station for an offence punishable under Section 4(1)(k) of TNP Act, 1937;



(iv) Crime No.464 of 2015 registered on the file of Anaikkaranthathiram Police Station for an offence punishable under Section 4(1)(aaa) r/w 4(1-A) TNP Act @ 4(1)(aaa) of TNP Act, 1937; and

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.

"The Detaining Authority after detaining him under the order of detention served the grounds of detention and also the relied on materials in the form of booklet. However, the copy of G.O.(D).No.211 Home, Prohibition and Excise(XVI) Department dated 18.10.2015 was not included in the booklet supplied to the detenu. The non-supply of a relevant material which is also a relied on document will amount to denial of a reasonable opportunity to make an effective challenge to the order of detention. On that ground alone, the order of detention is liable to be set aside."

5. The learned counsel for the petitioner after taking us through the entire booklet points out the fact that the copy of G.O.(D).No.211 Home, Prohibition and Excise (XVI) Department dated 18.10.2015 was not included in the booklet supplied to the detenu.

6. So far as the contention of the learned counsel for the petitioner regarding non-furnishing of the Government Order is concerned, admittedly, the power delegated to the Detaining Authority was being periodically extended by fresh Government Orders passed once in three months and a copy of the latest Government Order extending the delegation referred to in the detention order, has not been furnished to the detenu. Non-furnishing of the same amounts to denial of a reasonable opportunity to make an effective challenge to the order of detention. On that score alone, the order of detention is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and this order is set aside. The order of detention, made in C.O.C.No.73/2015 dated 05.11.2015, by the second respondent, the District Collector and District Magistrate, Office of the District Collector and District Magistrate,



Nagapattinam District, Nagapattinam and directs the release of the detenu by name Irudayasamy S/o Mariyasusai, aged about 57 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

- To
- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
 - 2.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
 - 3 The Superintendent of Prison, Central Prison, Trichy.
 4. The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai 600 009.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.K.M.Karunakaran, Advocate in SR.No. 72079

TS/31.12.2015/3P-7C/AAL-MPA

Order made in
H.C.P (MD) No.1581 of 2015

Dated:- 16.12.2015