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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE **P.R.SHIVAKUMAR**
and

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

H.C.P(MD)No.1589 of 2015

V.Panchavarnam

.. Petitioner

Vs.

1.State of Tamil Nadu, rep by,
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, 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 Central Prison,
Central Prison, Tiruchirappalli.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records in detention order passed in C.O.C.No.71 of 2015, dated 30.10.2015 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Beema @ Murasolimaran, S/o.Vanarajan, Male aged about 23 years, who is detained in Central Prison, Trichirappalli, before this Court and set him at liberty forthwith.

For petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.A.Ramar

Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu. The detenu has been detained by the second respondent by his order in Detention Order C.O.C.No.71 of 2015, dated 30.10.2015, holding him to be a "Bootlegger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.322 of 2015 registered on the file of Vellipalayam Police Station for offences punishable under Sections 4(1)(aaa), r/w 4(1-A) of TNP Act, 1937 (Transport) and following two adverse cases:-

(i). Crime No.425 of 2015 registered on the file of Nagore



Police Station for offences punishable under Sections 4(1)(aaa), r/w 4(1-A) of TNP Act, 1937 (Transport); and

(ii) Crime No.876 of 2015 registered on the file of Nagapattinam PEW for offences punishable under Sections 4(1)(aaa), r/w 4(1-A) of TNP Act, 1937 (Transport).

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Bootlegger" 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 primarily relies on the following contention:-

Though the Detaining Authority took note of the fact that the detenu was remanded in the ground case in Crime No.322 of 2015 registered on the file of Vellipalayam Police Station and also the first and second adverse cases, namely Crime No.425 of 2015 registered on the file of Nagore Police Station and Crime No.876 of 2015 registered on the file of Nagapattinam PEW till 03.11.2015, while clamping the order of detention on 30.10.2015, the Detaining Authority simply referred to the imminent possibility of the detenu coming out on bail in the ground case alone and omitted to express the subjective satisfaction with clarity as to the the real/imminent possibility of the detenu coming out on bail in the first and second adverse cases. Such omission will show non-application of mind on the part of the Detaining Authority with regard to the necessity of clamping an order of detention while the detenu was in custody as a remand prisoner in the first and second adverse cases.

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. The Detaining Authority, referring to the remand of the detenu in the ground case, viz., Crime No.322 of 2015 registered on the file of Vellippalayam Police Station, made the following observation in the grounds of detention:-

"5. I am aware that Thiru.Beema @ Murasolimaran, male aged 23/2015, S/o.Vanarajan was produced before the learned Judicial Magistrate No.II, Nagapattinam, on 12.10.2015 and remanded in District-Jail, Nagapattinam, as a remand prisoner on the same day itself. His remand period was expired on 26.10.2015 and further his remand period was extended up to 06.11.2015. I am aware that

Beema @ Murasolimaran, Male, aged 23/2015, S/o.Vanarajan, is in remand in connection with the case in Vellippalayam Police Station in Cr.No.322 of 2015. I



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am aware that he had moved a bail petition before the learned Judicial Magistrate Court No.II, Nagapattinam in Cr.M.P.No.3317 of 2015 in connection with the above case and the same was dismissed by the learned Judicial Magistrate Court No.II, Nagapattinam on 15.10.2015. However, he was granted bail in this case by the District Sessions Judge, Nagapattinam in Cr.M.P.No.2799 of 2015 on 28.10.2015. But the accused did not produce enough surety in the court to come out on bail. Moreover, if the accused produce enough surety also he would continue to be in prison as a remand prisoner in the previous case in Cr.No.876 of 2015, u/s 4(1)(aaa), r/w 4(1-A) of TNP Act, 1937 of Prohibition Enforcement Wing, Nagapattinam. His remand period upto 03.11.2015 and another previous case Cr.No.425 of 2015, u/s 4(1)(aaa), r/w 4(1-A) of TNP Act, 1937 (Transport) of Nagore Police Station. His remand period up to 03.11.2015. Hence, I am satisfied that there is a real and imminent possibility of (Thiru.Beema @ Murasolimaran, Male, aged 23/2015, S/o.Vanarajan) coming out on bail by filing a bail application for the above case before the Higher Court".

6. A reading of the above extract will make it clear that the Detaining Authority considered the real possibility of the detenu coming out on bail in the ground case. So far as the first and second adverse cases are concerned, the Detaining Authority fail to advert to the question whether any bail application was filed and dismissed in any one of those adverse cases. In the first adverse case, viz., Crime No.425 of 2015 registered on the file of Nagore Police Station and the second adverse case in Crime No.876 of 2015 registered on the file of Nagapattinam PEW, he was remanded upto 03.11.2015. However, the Detaining Authority simply referred to a case in singular. It cannot be understood as to which of the three cases, the ground case, first adverse case and second adverse case was referred to by the Detaining Authority. Hence, on that 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 30.10.2015, made in C.O.C.No.71 of 2015, passed by the second respondent, the District Collector and District Magistrate, Nagapattinam District, Nagapattinam, and directs the release of the detenu, by name Beema @ Murasolimaran, S/o.Vanarajan forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (AE)

/True Copy/



To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, 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 Central Prison,
Central Prison, Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law and Order), Fort St.George, Chennai -9.
5. The Commissioner of Police,
Trichy District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Akm/31.12.2015/4p-7c/GSV/AN/SAR-II

ORDER MADE IN
H.C.P (MD) No.1589 of 2015
17.12.2015