



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.11.2015

CORAM:

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

H.C.P(MD)No.872 of 2015

R.Antony Raj .. Petitioner
Vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Department of Prohibition and Excise [Home],
Fort.St.George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Inspector of Police,
PEW, Nagapattinam, Nagapattinam District.
- 4.The Superintendent of Police,
Central Prison, Trichirappalli. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records relating to the impugned order in respect of C.O.C.No.37 of 2015, dated 09.06.2015, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu R.Kalidoss, S/o.Ravi, aged about 29 years, now confined at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

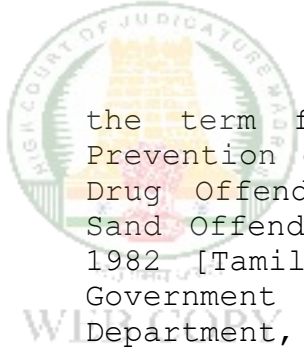
For petitioner : Mr.Ilayaraja Kandasamy
For Respondents : Mr.A.Ramar
Additional Public Prosecutor

O R D E R

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

The petitioner is the brother of the detenu, namely R.Kalidoss, S/o.Ravi, aged about 29 years and he has challenged the order of detention passed by the second respondent in C.O.C.No.37 of 2015, dated 09.06.2015.

2. The detenu, R.Kalidoss came to adverse notice in three adverse cases in 1).Crime No.947 of 2014, registered on the file of Nagapattinam PEW, for the offences punishable under Section 4(1) (aaa) r/w TNP Act, 1937 and 4 and 5 of TNRS Rules, 2).Crime No.863 of 2014, registered on the file of Nagapattinam PEW, registered on the file of Nagapattinam PEW, for the offence punishable under Sections 4(1) (aaa), 4 (1)(i) r/w 4(1-A), TNP Act 1937, 3).Crime No.329 of 2015, registered on the file of Nagapattinam PEW, for the offence punishable under Section 4 (1-A), TNP Act 1937, besides the ground case in Crime No.332 of 2015, on the file of Nagapattinam Prohibition Enforcement Wing for offences punishable under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) TNP Act, 1937, to hold the detenu as "bootlegger" in accordance with the definition of



the term found in sub-section 1 of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Cyber-Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982] read with the orders issued by the Government in G.O.[D].No.87, Home Prohibition and Excise [XVI] Department, dated 18.04.2015.

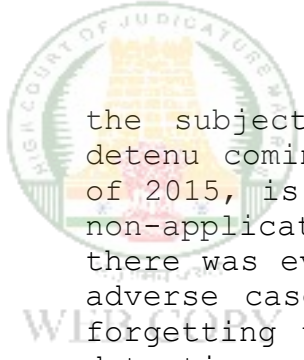
3. Though the order of detention is assailed on a number of grounds, the learned counsel for the petitioner relies on the following contention:-

While expressing the subjective satisfaction of the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the third adverse case, namely, Crime No.329 of 2015, registered on the file of PEW, Nagapattinam, the Detaining Authority referred to the dismissal of the bail petition in Cr.MP.No.1544 of 2015 by the Judicial Magistrate and pendency of the bail petition filed before the Sessions Judge, Nagapattinam in Cr.M.P.No.1313 of 2015. Still, the Detaining Authority went on further to state that he was satisfied that there was real possibility of the detenu coming out on bail by filing a bail petition for Nagapattinam Prohibition Enforcement Wing in Crime No.329 of 2015, before the appropriate Court. The said observation will show pre-determination and mechanical clamping of the order, without application of mind as to whether there was any necessity to file further bail application, while considering the imminent possibility of the detenu coming out on bail in a particular case.

4. In Paragraph No.5 of the grounds of detention, the Detaining Authority made the following observations:-

"Moreover, the accused was in remand in the previous case in Cr.No.329 of 2015, u/s, 4(1)(aaa), r/w 4(1-A) TNP Act, 1937, [Transport] of Nagapattinam Prohibition, Enforcement Wing. In this case, his remand period is upto 12.06.2015. I am aware that he had moved a bail petition before the learned Judicial Magistrate Court No.II, Nagapattinam in Cr.M.P.No.1544 of 2015 in connection with above case and the same was dismissed by the learned Judicial Magistrate Court No.II, Nagapattinam, on 04.06.2015. Further, bail petition filed before the Sessions Judge, Nagapattinam, was pending in Cr.MP.No.1313 of 2015, dated 05.06.2015. Further, in his own First adverse case in Nagapattinam PEW Cr.No.947 of 2014, u/s 4(1)(aaa) r/w 4 (1-A) TNP Act 1937, 4 & 5 TNRS Rules, Thiru.Kalidoss, male, aged 29/2015, S/o.Ravi was arrested and remanded on 18.12.2014 and later released on bail by the District and Sessions Court, Nagapattinam in Cr.MP.No.12/2015, dated 12.01.2015. Hence, I am satisfied that there is a real possibility of [Thiru Kalidoss, male, aged 29/2015, S/o.Ravi] coming out on bail by filing a bail application for the Nagapattinam Prohibition Enforcement Wing in Crime No.329 of 2015 before the appropriate Court".

5. A perusal of the above extracted portion will make it clear that



the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the third adverse case, namely Crime No.329 of 2015, is nothing but the ipse dixit of the Detaining Authority showing non-application of mind insofar as the Detaining Authority observed that there was every possibility of the detenu coming out on bail in the third adverse case by filing an application for bail in an appropriate Court, forgetting the fact that as on the date of the clamping of the order of detention, the bail application was pending before the Sessions Court, Nagapattinam, which has also been noted in the first part of the above extract made from the grounds of detention. Hence, we are inclined to accept the contention of the learned counsel for the petitioner that there is non-application of mind on the part of the Detaining Authority, which vitiates the order of detention.

6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 09.06.2015, made in C.O.C.No.37/2015, by the second respondent, the District Collector and District Magistrate, Nagapattinam District, Nagapattinam and directs the release of the detenu, by name R.Kalidoss, S/o.Ravi, aged about 29 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(Per.Admn)

/True copy/

Sub Assistant Registrar

To:

- 1.The Secretary to Government,
Department of Prohibition and Excise [Home],
Fort.St.George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Inspector of Police,
PEW, Nagapattinam, Nagapattinam District.
- 4.The Superintendent,
Central Prison, Trichirappalli.
- 5.The Joint Secretary to Government,
Public (Law & Order)
Fort Saint George, Chennai-9.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

sm:PM-MP:AR II:1.12.2015:3P/7C

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ORDER MADE IN
H.C.P (MD) No.872 of 2015
17.11.2015