

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2016

CORAM

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

H.C.P. NO.123 OF 2016

Surya ... Petitioner/Aunty of Detenu

Versus

1. State of Tamil Nadu,
Rep.by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and
District Magistrate of Vellore District,
Vellore - 9. Respondents

PRAYER : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the entire records, relating to petitioner's sister's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 04.01.2016 on the file of the second respondent herein made in proceedings C3.D.O.No.2/2016, quash the same as illegal and consequently direct the respondents herein to produce petitioner's sister's son, namely, Eli (a) Saravanan son of Sivalingam, aged 24 years before this Court and set petitioner's sister's son at liberty from detention, now petitioner's sister's son detained at Central Prison, Vellore.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.M.Maharaj
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.
and D.KRISHNAKUMAR, J.)

This Habeas Corpus Petition has been filed by the aunt of the detenu, namely, Eli @ Saravanan, son of Late Sivalingam, aged 24 years, to issue a Writ of Habeas Corpus, to call for the records, in C3.D.O.No.02/2016 dated 04.01.2016, passed by the second Respondent, detaining the detenu, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, 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 14/1982) the Tamil Nadu Act 14 of 1982, branding him as a "Bootlegger", in the Central Prison, Vellore, to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. We have heard the learned counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the State and we have also perused the records carefully.

3. Though the petitioner has raised various grounds, the learned counsel for the petitioner would mainly contend that the detaining authority in paragraph No.3 of the grounds of detention has observed that the detenu was duly produced before the Principal District Munsif-cum-Judicial Magistrate, Vaniyambadi on 09.12.2015, ordered to be remanded till 22.12.2015 and the remand was further extended upto 05.01.2016, however, with regard to extension of remand order from 22.12.2015 to 05.01.2016, it is not supported by materials and hence, the order is liable to be quashed on the ground of non-application of mind.

4. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5. Section 167(b) of Criminal Procedure Code would run thus:-

"(b). No Magistrate shall authorise detention of an accused in custody of the Police under this Section unless the accused

is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the Police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage."

6. Section 167(b) of the Criminal Procedure Code mandates physical production of the accused before the Magistrate for the first remand and for subsequent remands, the accused may be produced before the Magistrate either in person or through video conferencing. No order of remand or remand extension shall be made without following the procedure indicated above.

7. In the case on hand, there is no controversy with regard to arrest of the detenu, in the ground case in Crime No.777 of 2015 on 08.12.2015 and remanded on 09.12.2015 till 22.12.2015 and he was lodged in Sub Jail, Ambur as remand prisoner. Page No.55 of the booklet discloses that the accused was not produced on 22.12.2015, however he was directed to be produced on 05.01.2016. But, the detaining authority in paragraph No.3 of the grounds of detention has stated that the detenu was remanded upto 05.01.2016. Neither material was produced to show that the accused was remanded till 05.01.2016, nor the order copy was furnished to the detenu.

8. It is settled law that all relevant documents which are likely to affect the mind of the detaining authority should be placed before it. It is also well settled that all the relied upon documents should be furnished to the detenu to make an effective representation in compliance with the constitutional mandate provided under Article 22(5) of the Constitution of India. It is not disputed that the extension of remand was neither placed before the detaining authority nor supplied to the detenu.

9. In A.Sowkath Ali v. Union of India, [2000 SCC (Cr1.) 1304], the Supreme court has held that all documents which are relevant which have bearing on the issue, which are likely to affect the mind of the detaining authority should be placed before it. The Supreme Court held that the confession statement and the retraction, both constituting a composite relevant fact, should have been placed. If one of the two documents alone is placed without the other, it would affect the subjective satisfaction of the detaining authority. The principle laid down in this case applies to both the points, viz., failure to place the extension application filed by the detenu or consideration

of the same by the detaining authority and the failure to consider the substance of the retraction made by the detenu and this vitiates the order of detention.

10. In 2012 (2) MLJ (Cr1.) 721 [Shaik Rahamathullah v. Secretary to Government of T.N. & Ors.], in similar facts, the Hon'ble Supreme Court set-aside the order of detention, observing that there was no material placed before the detaining authority to come to the subjective satisfaction. In paragraph 21 of the said judgment, the Hon'ble Supreme Court has held as follows:-

21. Therefore, we are of the considered view that there is no material placed before the detaining authority to show that even though the passport had been impounded there is likelihood of the detenu indulging in smuggling activities in future. In the absence of such acceptable materials to come to the subjective satisfaction the order of detention is vitiated and liable to be set aside.

11. Had the detaining authority applied its mind, he would have been observed that the accused was not produced and he was directed to be produced on 05.01.2016. When there is no material produced by the sponsoring authority to show that the detenu remanded till 05.01.2016, the subjective satisfaction arrived at by the detaining authority is without any material. In the light of the principles laid down in the above cited cases and in the absence of any acceptable materials being placed before the detaining authority, the subjective satisfaction arrived at by the detaining authority is vitiated and liable to be set-aside.

12. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in C.3.D.O.No.02/2016 dated 4/1/2016 passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

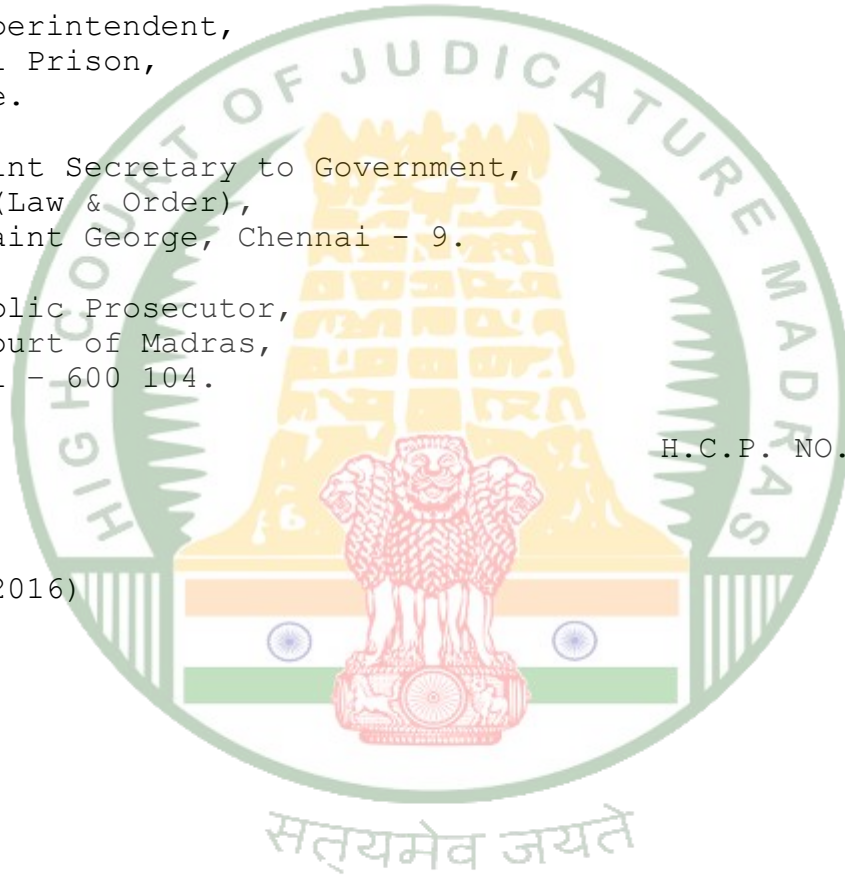
DP/MVS/RNS

To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The District Collector and
District Magistrate of Vellore District,
Vellore - 9.
3. The Superintendent,
Central Prison,
Vellore.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.

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JSV(CO)
CA(06/06/2016)



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