

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2016

CORAM

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.299/2016

Kabose

..

Petitioner

Vs.

1.State, rep by the
Secretary to Government
Home, Prohibition & Excise Department
Fort Saint George,
Chennai 600 009.

2.The District Magistrate & District Collector
Vellore District
Vellore 632 009.

..

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records of the 2nd respondent pertaining to the order made in C3/D.O.No.06/2016 dated 08.02.2016, in detaining the detenu under the Tamil Nadu Act 14 of 1982, as a Bootlegger and quash the same and direct the respondents to produce the detenu, namely, Rajiv Gandhi, S/o Kanagaraj, who is detained at the Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.V.Parivallal

For Respondents : Mr.M.Maharaja,APP

O R D E R

[Order of the Court was made by G.CHOCKALINGAM, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in C3/D.O.No.06/2016 dated 08.02.2016, whereby the detenu/the brother-in-law of the petitioner herein, Rajiv Gandhi, son of Kanagaraj, aged about 31 years, was ordered to be detained under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug

Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "BOOTLEGGER".

2.Though many grounds have been raised in the petition, Mr.V.Parivallal, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.Learned counsel appearing for the petitioner submitted that there is a delay of 3 days in depositing the samples before the Court as the sponsoring authority has collected the samples on 02.01.2016, but the same was sent to Court only on 05.01.2016 and subsequently, the samples were sent for chemical analysis and hence, the samples would have lost its real character. Hence, it is submitted that the Detention Order which has been passed on the basis of the Chemical Analysis report is indicative of total non-application of mind on the part of the detaining authority and the same is vitiated and is unsustainable in law.

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.We have heard the learned counsel for both sides with regard to the facts and citation.

6.The ground raised by the learned counsel for the petitioner is that the delay in depositing the samples before the Court concerned. As evidenced from the documents, the samples were collected by the Sponsoring Authority on 02.01.2016; but the same were sent to Court only on 05.01.2016 and there is a delay of 3 days in sending the samples. This inordinate delay of 3 days in depositing the samples before the Court and thereafter, sending the same for chemical analysis will make the sample to lose its real character. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

7.A Division Bench of this Court in KAMALA Vs. THE STATE OF TAMIL NADU REP. BY THE SECRETARY TO GOVERNMENT, HOME, PROHIBITION & EXCISE DEPT., CHENNAI AND ANOTHER reported in 2013 [3] MLJ [CRL.] 671, has held thus:-

".....

4.From a perusal of the booklet produced by the learned Additional Public Prosecutor, it is seen that though the samples were drawn from the seized material on 11.02.2013 by the investigating officer, they were sent for Chemical examination only on 14.02.2013. Thus, there is an unexplained delay in sending the samples for chemical analysis and no satisfactory explanation is also forthcoming from the learned Additional Public Prosecutor for the said delay.

5.The Hon'ble Division Bench of this Court, in a similar case, viz., SUNDARARAJAN Vs. THE STATE OF TAMIL NADU REP. BY ITS SECRETARY TO GOVERNMENT, AND ANOTHER [HCP.No.320/2009] decided on 23.03.2009, has been pleased to lay down as under:-

"4.Apart from the other grounds raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner has stressed the ground of delay in sending the sample, which was recovered from the detenu, to the chemical analyst for analysis. According to the learned counsel, though the sample of arrack was collected from the detenu on 15.09.2008, it was sent to the Assistant Director and Government Assistant Chemical Examiner, Regional Forensic Sciences Laboratory, for analysis only on 17.09.2008 and hence, there is an abnormal delay, which vitiates the order of detention passed against the detenu.

5.As seen from the records, it is clear that the sample of arrack, which was seized on 15.09.2008 from the detenu, was sent for chemical analysis only on 17.09.2008 and hence, there is an abnormal delay in sending the sample for chemical analysis, due to which, the sample will lose its character and there is no satisfactory explanation from the Public Prosecutor for the said delay."

8.In the light of the above facts and law and also taking into consideration the unexplained delay in sending the samples for chemical analysis, we have no hesitation in quashing the

order of detention on the above mentioned grounds.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detenu is directed to be released forthwith unless her presence is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ga/vj2

To

1.State, rep by the
Secretary to Government
Home, Prohibition & Excise Department
Fort Saint George,
Chennai 600 009.

2.The District Magistrate & District Collector
Vellore District
Vellore 632 009.

3.The Superintendent of Central Prison
Vellore.

4.The Joint Secretary to Government
Public (Law & Order),
Fort Saint George, Chennai 9.

5.The Public Prosecutor,
High Court, Madras.

skv co
kra 14.06.2016

H.C.P.No.299/2016

WEB COPY