



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1591 of 2015

Mahendran

..Petitioner

Vs.

- 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 Prison,
Trichy Central Prison,
Trichy District.

..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 second respondent in C.O.C.No.68/2015, dated 25.10.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Mahendran, S/o.Dhakshnamoorthy, aged about 25 years, now detained at Trichy Central Prison, before this Court and set him at liberty forthwith.

For petitioner	: Mr.R.Alagumani
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 detenu. He has been detained by the second respondent by his order in Detention Order in C.O.C.No.68/2015, dated 25.10.2015, 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.363 of 2015 registered on the file of Kilvelur Police Station for offences punishable under Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A) TNP Act 1937 and the following four adverse cases:-

(i). Crime No.207 of 2015 registered on the file of Kilvelur Police Station for offences punishable under Sections 4(1)(aaa) r/w 4(1-A) TNP Act 1937;

(ii). Crime No.484 of 2015 registered on the file of Nagapattinam PEW for offences punishable under Sections 4(1)(aaa) r/w 4(1-A) TNP Act 1937;

(iii). Crime No.647 of 2015 registered on the file of Nagapattinam PEW for offences punishable under Sections 4(1)(aaa) r/w 4(1-A) TNP Act 1937;

and

(iv).Crime No.755 of 2015 registered on the file of Nagapattinam PEW for offences punishable under Sections 4(1)(aaa) r/w 4(1-A) TNP Act 1937;

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 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 mainly relies on the contention that the subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case was nothing but the *ipse dixit*, not supported by cogent materials. The Detaining Authority referred to the bail order granted in the first adverse case, as the basis for such subjective satisfaction. However, the Detaining Authority failed to note that the bail in the first adverse case was granted on the ground that there was no previous case, whereas the ground case differs from the first adverse case, insofar as there were four adverse cases against the detenu prior to the registration of the ground case. Moreover, the bail order in the first adverse case came to be passed on 12.06.2015 and the bail application filed in the ground case was dismissed on 16.10.2015. Hence, on the ground of inappropriate comparison of the cases to express the subjective satisfaction as to the real possibility of the detenu coming out on bail in the ground case, the order of detention is to be set aside, applying the principle laid down by the Hon'ble Supreme Court in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181.

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, in the grounds of detention, while expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case made the following observations:-

"5. I am aware that Thiru. Mahendran, Male, aged 25/2015, S/o. Dhakshnamoorthy was produced before the learned Judicial Magistrate Court No.I, Nagapattinam on 04-10-2015 and remanded and lodged at District Jail, Nagapattinam as a remand prisoner on the same day itself. His remand period was upto on 16-10-2015 and further his remand period was extended upto 30-10-2015. I am aware that Thiru. Mahendran, Male, aged 25/2015, S/o. Dhakshnamoorthy is in remand in connection with the case in Kilvelur Police Station Cr.No.363/2015. I am aware that he had moved a bail petition before the learned Judicial Magistrate Court No.I, Nagapattinam in Cr.M.P.No.4736/2015 in connection with the above case and the same was dismissed by the learned Judicial Magistrate Court No.I, Nagapattinam on 07-10-



2015. Further bail petition filed before the Sessions Judge, Nagapattinam was dismissed in Cr.M.P.No. 2716/2015, dated 16-10-2015. It is learnt from the records produced by the Inspector of Police, Kilvelur Circle that Tmt. Abirami wife of Thiru. Mahendran, is tried to file bail petition before Hon'ble High Court, Chennai. Further, in his own First adverse case in Kilvelur Police Station Cr.No.207/2015, u/s 4 (1) (aaa) r/w 4 (1-A) TNP Act 1937 Thiru. Mahendran, Male, aged 25/2015, S/o. Dhakshnamoorthy was arrested and remanded on 03-06-2015 and later released on bail by the Nagapattinam District and Sessions Court in Cr.M.P.NO.1360/2015 on 12-06-2015. Hence, I am satisfied that there is a real and imminent possibility of [Thiru.Mahendrarn, Male, aged 25/2015, S/o.Dhakshnamoorthy] coming out on bail by filing a bail application for the above cases before the Higher Court".

6. The above extracted portion, as rightly contended by the learned counsel for the petitioner, shows that the comparison is not proper and it may even show non-application of mind on the part of the Detaining Authority, since bail in the first adverse case was granted on the ground that there was no previous case, whereas the ground case differs from the same, insofar as there were four adverse cases against the detenu registered prior to the registration of the ground case. The comparison of the first adverse case with Crime No.207 of 2015 registered on the file of Kilvelur Police Station to express the subjective satisfaction of the detenu coming out on bail in the ground case is not proper. The comparison is not in tune with the dictum laid down by the Hon'ble Supreme Court in Huidrom's case, cited supra. Hence, on that ground alone, the subjective satisfaction of the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case can be held to be *ipse dixit*, not based on cogent materials and 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 25.10.2015, made in C.O.C.No.68 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 Mahendran, aged about 25 years, S/o.Dhakshnamoorthy forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

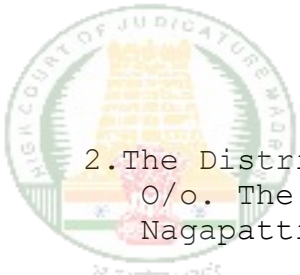
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS)

To:

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.



2.The District Magistrate/District Collector,
O/o. The District Magistrate/District Collector,
Nagapattinam.

3.The Judicial Magistrate No.I,
Nagapattinam.

4.The Joint Secretary to Govt.,
Public (Law & Order) Dept.,
Fort St.George, Chennai-9.

5.The Superintendent,
Central Prison,
Trichirappalli.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Alagumani, Advocate in SR.5261

H.C.P (MD) No.1591 of 2015
04.01.2016

NB

PBK/PM-MP 18.01.2016 ::4P-8C: