



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.1641 of 2015

Sundari

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 9.

2.The District Magistrate and District Collector,
Dindigul District, Dindigul.

.. 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 pursuant to the proceedings of the second respondent in Detention Order No.74/2015, dated 21.10.2015 quash the same and consequently direct the respondents to produce the detenu, namely Alagumurugan, S/o.Paulsamy Thevar, aged about 33 years, who is now detained in Central Prison, Madurai, before this Court and set him at liberty forthwith.

For petitioner

: Mr.M.Subash Babu

For Respondents

: Mr.A.Ramar

Additional Public Prosecutor

ORDER

[Order of the Court was made by **V.S.RAVI, J.**]

The petitioner is the wife of the detenu. The detenu has been detained by the second respondent by his order in Detention Order No.74/2015, dated 21.10.2015, 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.929 of 2015 registered on the file of Dindigul Prohibition Enforcement Wing for offences punishable under Sections 4(1-aaa) 4(1-A) (Transport) Tamil Nadu Prohibition Act Sections 5 and 6 of the Tamil Nadu Rectified Spirit Rules, 2000.

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 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 shows non-application of mind on the part of the Detaining Authority and it can be even termed as *ipse dixit*, as it is not based on cogent materials.

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. In paragraph No.5 of the grounds of detention, the Detaining Authority, while expressing his subjective satisfaction regarding the possibility of the detenu coming out on bail, made the following observation:-

"The accused Alagumurugan filed bail petition relates to Dindigul Prohibition Enforcement Wing Cr.No.929/15 u/s 4(1-aaa) 4(1-A) (Transport) Tamil Nadu Prohibition Act Sections 5 and 6 of the Tamil Nadu Rectified Spirit Rules, 2000 before Judicial Magistrate No.II, Dindigul, vide Cr.MP.No.6549/2015 and the bail petition was dismissed on 12.10.2015. Again, he filed bail petition before the Court of Principal District Sessions Court, Dindigul vide Cr.MP.No.2745 of 2015 and the same is pending. Hence, I infer that there is real possibility of his [Alagumurugan] coming out on bail by filing petition before Higher Court".

6. The above extracted portion will show that the Detaining Authority has not applied his mind, properly, and he has made the said observation, which is also, unsustainable, in accordance with law. Thus, the expression of subjective satisfaction regarding the real possibility of the detenu coming out on bail stands vitiated, as the same can be termed as *ipse dixit*, not supported by cogent materials. 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 21.10.2015, made in Detention Order No.74/2015, by the second respondent, the District Magistrate and District Collector, Dindigul District, Dindigul and directs the release of the detenu, by name Alagumurugan, S/o.Paulsamy Thevar, aged about 33 years, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(R)



Sub Assistant Registrar

To:

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 9.
2. The District Magistrate and District Collector,
Dindigul District, Dindigul.
3. The Superintendent,
Central Prison, Madurai.
(In Duplicate to communicate the detenu)
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

akm/08.01.2016/3p-6c/AAL/MPA/SAR-I

ORDER MADE IN
H.C.P (MD) No.1641 of 2015
04.01.2016