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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.1661 of 2015

K.Dhana lakshmi

: Petitioner

Vs.

1.The Secretary to Government,
rep.by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 made in No.143/BCDFGISSSV/2015 dated 04.11.2015 passed by the Commissioner of Police, Madurai city, Madurai, the second respondent herein and set aside the same and direct the respondents to produce the detenu Karthikeyan aged 30 S/o. Jeyakumar now confined in Central Prison, Madurai before this Court and set the detenu Karthikeyan, S/o.Jeyakumar at liberty.

For Petitioner : Mr.A.T.Vijay

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 wife of the detenu. The detenu was detained by the second respondent by his order in No.143/BCDFGISSSV/2015, dated 04.11.2015, 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.882 of 2015 registered on the file of Madurai City Prohibition Enforcement Wing for offences punishable under Sections 4(1-A) and 4(1)(aa) of the Tamil Nadu Prohibition Act, 1937 [Transport].



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 the order of detention is assailed on a number of grounds, the learned counsel for the petitioner mainly relies on the following contentions:-

(i) 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. The ground case against the detenu was registered for offences punishable under Sections 4(1-A) and 4(1)(aa) of the Tamil Nadu Prohibition Act, 1937 [Transport], whereas in the similar case, the offences for which the case was registered were for offences punishable under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) of the Tamil Nadu Prohibition Act, 1937. The same will show non-application of mind on the part of the Detaining Authority.

(ii) There is also variation between the Tamil version and English version of the bail order in the similar case which are found at page Nos.98 and 99 of the booklet. The English version and the Tamil version differ regarding the name of the Judge and also the degree. In addition, in the body of the order the offence has been cited as one punishable under Sections 4(1)(aa) r/w 4(1-A) of the Tamil Nadu Prohibition Act, 1937, whereas, in the cause title, the provision of law came to be noted as 4(1)(aaa) r/w 4(1)(i) r/w 4(1-A) of the Tamil Nadu Prohibition Act, 1937.

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. For better appreciation, the relevant portion in the grounds of detention is extracted hereunder:-

"Further I am aware that the bail was granted by the District Sessions Judge, Nagapattinam, to one accused Tr.Vaithi @ Vaithiyanathan, concerned in Sirkali Prohibition Enforcement Wing, Cr.No.873/2015 u/s 4(1)(aaa), 4(1)(i) r/w 4(1-A) of the Tamil Nadu Prohibition Act, 1937 vide Cr.MP.No.2512/2015, dated 05.10.2015, which was similar to the offences in the above ground case and adverse case".

6. The Detaining Authority referred to an order dated 05.10.2015, passed by the learned District and Sessions Judge, Nagapattinam, in Cr.MP.No.2512 of 2015, as the similar case, in which bail was granted to one Vaithi @ Vaithiyanathan in Crime No.873 of 2015 on the file of Sirkali Prohibition Enforcement Wing.

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7. As rightly contended by the learned counsel for the petitioner, the comparison is not proper and it may even show non-application of mind



on the part of the Detaining Authority. Hence, the plea of non-application of mind on the part of the Detaining Authority, as canvassed by the learned counsel for the petitioner, deserves to be sustained.

8. So far as the second contention is concerned, as rightly contended by the learned counsel for the petitioner, there is a variation between the Tamil version and English version of the bail order in the similar case which are found at page Nos.98 and 99 of the booklet. The English version and the Tamil version differ regarding the name of the Judge and also the degree. There is also difference regarding the offence cited in the body of the bail order and in the cause title. Failure to note the same, and reference of such nebulous order will vitiate the subjective satisfaction, as there was non-application of mind. On both the grounds, the order of detention is liable to be set aside.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 04.11.2015, made in No.143/BCDFGISSSV/2015, by the second respondent, the Commissioner of Police, Madurai City, Madurai and directs the release of the detenu by name Karthikeyan S/o.Jeyakumar, aged about 30 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The Secretary to Government, rep.by its Secretary to Government,
Home, Prohibition and Excise Department, Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police, Madurai City, Madurai.
- 3.The Superintendent of Prison, Madurai Central Prison,
Madurai District.
- 4 The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.A.T.Vijay, Advocate in SR.No. 91

TS/18.01.2016/3P-7C/AAL-MPA

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