



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P.(MD)No.1662 of 2015

C.Sahayamary

.. Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.
 - 2.The District Collector and District Magistrate,Collectorate
Tirunelveli District,
Tirunelveli-9.
 - 3.The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- .. Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus to call for the entire records relating to the detention order dated 07.11.2015 made in M.H.S.Confdl.No.125/2015 passed by the second respondent herein, quash the same and direct the respondents to produce the body or person of the petitioner's husband - A.Balakrishnan S/o.Ayyakutty, aged about 58 years, now confined in Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

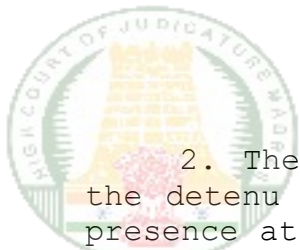
For Petitioner : Mr.I.Pinaygash
for Mr.T.Lajapathi Roy

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.R.SHIVAKUMAR, J]

The petitioner is the wife of the detenu viz., Balakrishnan S/o.Ayyakutty, aged about 58 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.125/2015, dated 07.11.2015, holding him to be a "Boot-legger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.273 of 2015 on the file of Palavoor Police Station registered for offences punishable under Sections 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act read with Section 7 of the Tamil Nadu Rectified Spirit Rule 2000.



2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "Boot-legger" 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 several grounds, the learned counsel for the petitioner mainly relies on the contention that the bail application filed in the ground case was dismissed and no further bail application was filed, but still the detaining authority expressed subjective satisfaction that there was a real possibility of the detenu coming out on bail in the ground case relying on the bail order passed in another case and that the same will be termed 'ipse dixit' not supported by cogent materials.

4. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction regarding the real possibility of the detenu coming out on bail in a case, wherein the bail application filed by the detenu was dismissed and no further bail application is pending, cannot be based on any other case in respect of other persons and that the very fact that no bail application is pending will negative the imminent possibility of the detenu coming out on bail, subject to an exception that a co-accused in the very same case placed under similar circumstances has been released on bail.

5. In support of his contention, the learned counsel for the petitioner relies on the Judgment of a Larger Bench of the Hon'ble Supreme Court consisting of three Hon'ble Judges in Rekha Vs. State of Tamil Nadu, reported in (2011) 5 SCC 244, followed by and clarified in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181, which has also been followed by this Court in an unreported decision in H.C.P(MD).No.1567 of 2015 [Sri Devi Vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others], vide order dated 14.12.2015.

6. The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

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

"5)I am aware that Thiru.Balakrishnan is in remand in Palavoor Police Station Crime Number 273/2015 and in this case he filed a bail petition before the Principal Sessions Court, Tirunelveli, in Cr.M.P.No.6451/2015 on 26.10.2015 and the bail petition was dismissed on 04.11.2015. I am also aware that in a similar case bail has been granted to Sunil alias Satheesh in CRMP No.1213/2008 dated 01.02.2008 by the Madurai Bench of Madras High Court. I therefore infer that there is real possibility of his (Thiru.Balakrishnan) coming



out on bail in Palavoor Police Station Crime Number 273/2015; since bails are granted by the appropriate courts in such cases. If he comes out on bail, he will indulge in further activities in future, which will be prejudicial to the maintenance of the public order and public health."

WEB COPY

8. The Detaining Authority referred to the fact that the bail application filed in the ground case was dismissed by the learned Principal Sessions Judge, Tirunelveli, vide CR.M.P.No.6451 of 2015, on 26.10.2015 and that thereafter, no bail application was filed in the ground case, namely, Crime No.273/2015 registered on the file of Palavoor Police Station. However, the Detaining Authority proceeded further to express a subjective satisfaction that there was real possibility of the detenu coming out on bail by filing a bail application, since in a similar case, not being a case of a co-accused in the very same case, another person was granted bail by this Court in Crl.O.P.(MD)No.1213 of 2008, on 01.02.2008. Such a comparison of bail order passed in another case, when no bail application is pending, to express subjective satisfaction of the real possibility of the detenu coming out on bail, is against the dictum laid down by a Larger Bench of the Supreme Court in Rekha Vs. State of Tamil Nadu, reported in (2011) 5 SCC 244, followed by a Division Bench of the Hon'ble Supreme Court in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181 and by this Court in an unreported decision in H.C.P(MD).No.1567 of 2015 [Sri Devi Vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others], vide order dated 14.12.2015. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on the said ground alone.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 07.11.2015, made in M.H.S.Confdl.No.125/2015, by the second respondent / the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Balakrishnan S/o.Ayyakutty, aged about 58 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Principal Secretary,
State of Tamil Nadu,
Home Prohibition & Excise Department,
Chennai-600 009.

3.The Super Palayan

sm:SKS-RR:8.2.2016:4P/8c

<https://hcservices.ecourts.gov.in/hcservices/>