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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.1669 of 2015

Shankar @ Shankar Ganesh

... Petitioner

Vs.

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

2.The District Collector and District Magistrate,
O/o. District Collector and District Magistrate,
Thanjavur District, Thanjavur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order of detention made in P.D.No.62/2015 dated 25.10.2015 on the file of the District Collector and District Magistrate, Thanjavur District, Thanjavur, the second respondent herein branding the detenu by name Shankar @ Shankar Ganesh aged about 29 years, S/o.Balakrishnan, as BOOT LEGGER, who is now confined in Central Prison, Trichy and quash the impugned order of detention and set him at liberty.

For Petitioner : Mr.A.Thiruvadi Kumar

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 detenu. He has been detained by the second respondent by his order in P.D.No.62/2015 dated 25.10.2015, 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.613 of 2015 registered on the file of Kumbakonam Prohibition Enforcement Wing for offences punishable under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 and the following three adverse cases:-

"(i) Crime No.441 of 2013 registered on the file of Kumbakonam Prohibition Enforcement Wing for offences punishable under Sections 4(1)(a) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 and 272 of the Indian Penal Code altered into Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937;



(ii) Crime No.442 of 2013 registered on the file of Kumbakonam Prohibition Enforcement Wing for offences punishable under Sections 4(1)(aaa) Transport r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 altered into 4(1)(aaa) of Transport Tamil Nadu Prohibition Act, 1937; and

(iii) Crime No.604 of 2015 registered on the file of Kumbakonam Prohibition Enforcement Wing for offences punishable under Sections 4(1)(aa) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 (Transport) and 420 of the Indian Penal Code and Sections 78 and 79 of Trade Merchandise Marks Act, 1958.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case and third adverse case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3. Though the detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that in the ground case and third adverse case, the bail applications filed were 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 above said two cases.

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 no 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 and followed by this Court in **H.C.P. (MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu and others]**, vide order dated 14.12.2015.

6. 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.

7. In paragraph No.7 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:



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"Moreover, in a similar case, identical to the ground case registered in Kumbakonam Prohibition Enforcement Wing Crime No.574/2013 under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937, bail was granted to the accused Thiru.Mani alias Subramanian by the Principal District and Sessions Court, Thanjavur vide Cr.M.P.No.4973/2013, dated 17.12.2013. Likewise, in a similar case identical to the adverse case (Kumbakonam Prohibition Enforcement Wing Cr.No.604/2015) registered in Pattukottai Prohibition Enforcement Wing Cr.No.847/2014 under Sections 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act, 1937 r/w 468, 471 and 420 of the Indian Penal Code, bail was granted to the accused Bala alias Balamurugan and Kumar by the Principal District and Sessions Court, Thanjavur in Crl.M.P.No.28/2015, dated 06.01.2015. I am also aware that in such cases, bails are granted by the Court after lapse of some time. Hence there is a real possibility of his (Thiru.Shankar alias Shankar Ganesh) coming out on bail by filing bail petitions for the above said two cases before the appropriate Court."

8. The Detaining Authority referred to the fact that the bail application filed in the ground case was dismissed by the learned Judicial Magistrate Court, Kumbakonam, vide Crl.MP.No.12764 of 2015, on 10.10.2015; and the bail application filed in the third adverse case was also dismissed by the learned Judicial Magistrate Court, Kumbakonam, vide Crl.MP.No.12769 of 2015, on 09.10.2015 and that thereafter, no bail application was filed in the ground case, namely, Crime No.613/2015 registered on the file of Kumbakonam Prohibition Enforcement Wing and also in the third adverse case namely Crime No.604 of 2015 registered on the file of Kumbakonam Prohibition Enforcement Wing. 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 the learned Principal Sessions Judge, Thanjavur. 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 followed by this Court in **H.C.P. (MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu 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 25.10.2015, made in P.D.No.62/2015, by the second respondent, the District Collector and District Magistrate, Thanjavur District, Thanjavur and directs the release of the detenu by name Shankar @ Shankar Ganesh S/o.Balakrishnan,



aged about 29 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(RTI)

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Sub Assistant Registrar

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To

- 1.The Secretary to Government, Government of Tamil Nadu,
Prohibition and Excise Department, Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o. District Magistrate and District Collector
Thanjavur District, Thanjavur.
- 3.The Superintendent, Central Prison, Tiruchirapalli.
- 4.The Joint Secretary to Government, Public (Law & Order)
Fort St.George, Chennai - 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+one cc to Mr.A.Thiruvadi Kumar, Advocate in SR.No.376

CSL/SKS-RR/02.02.2016/4P/7C

H.C.P (MD) No.1669 of 2015
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