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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.1670 of 2015

Vasanthi

..Petitioner

Vs.

1.State of Tamil Nadu,

The 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

Perambalur District, Perambalur.

3.The Superintendent of Central Prison,

Central Prison, Tiruchirapalli.

..Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus to for the entire records in detention order passed in Cr.M.P.No.19/2015 dated 15.11.2015 on the file of the 2nd Respondent herein and set aside the same as illegal and direct the Respondents to produce the body or person of the Petitioner's husband namely Chinraj S/o. Marudhai Male, aged about 57 years who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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. He was detained by the second respondent by his order in Cr.M.P.No.19/2015, dated 15.11.2015, 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.670 of 2015 on the file of Perambalur Prohibition Enforcement Wing registered for offences punishable under Sections 4(1)(a) r/w 4(1-A) of the Tamil Nadu Prohibition Act, 1937 and the following four adverse cases:

(i)Crime No.539 of 2014 registered on the file of Perambalur Prohibition Enforcement Wing for an offence punishable under Section 4(1)(i) Tamil Nadu Prohibition Act, 1937;

(ii)Crime No.751 of 2014 registered on the file of Perambalur Prohibition Enforcement Wing for an offence punishable under Section 4(1)(a) (Transport) Tamil Nadu Prohibition Act, 1937;



(iii) Crime No.234 of 2015 registered on the file of Perambalur Prohibition Enforcement Wing for offences punishable under Sections 4(1)(a) r/w 4(1-A) Tamil Nadu Prohibition Act, 1937; and

(iv) Crime No.387 of 2015 registered on the file of Perambalur Prohibition Enforcement Wing for offences punishable under Sections 4(1)(aa) r/w 4(1-A) Tamil Nadu Prohibition Act, 1937.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "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 detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that while referring to the bail application filed on behalf of the detenu in the ground case in Crime No.670 of 2015, the detaining authority referred to the Court as Principal District Munsif Court, whereas the bail application in the ground case was filed before the Principal Sessions Judge of Perambalur and the same was dismissed by the Principal Sessions Judge, Perambalur and that the same will show non-application of mind on the part of the Detaining Authority and mechanical passing of the detention order.

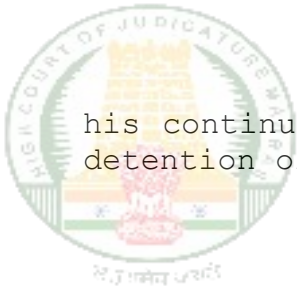
4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

5. In paragraph No.5 of the grounds of detention, the Detaining Authority made the following observation:-

"I am aware that Thiru Chinraj is in remand in Perambalur PEW Cr.No.670/2015 and has filed before the Principal District Munsif Court in Cr.M.P.Nos.681/2015 and 707/2015 and the same were dismissed on 14.10.2015 and 28.10.2015."

6. As rightly contended by the learned counsel for the petitioner, the detaining authority, while referring to the bail application filed on behalf of the detenu in the ground case, referred the Court as Principal District Munsif Court, which shows 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, has got to be countenanced 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 15.11.2015, made in Cr. M. P. No. 19/2015, passed by the second respondent, District Collector and District Magistrate, Perambalur District and directs the release of the detenu, by name Chinraj S/o. Marudhai aged about 57 years forthwith, if



his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(Crl.side)

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Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1.The Secretary to Government, State of Tamil Nadu,
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
Perambalur District, Perambalur.

3.The Superintendent of Central Prison,
Central Prison, Tiruchirapalli.

4.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.

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

+1cc to M/s.K.A.S.Prabhu, Advocate in SR.481

H.C.P. (MD) No.1670 of 2015
04.01.2016

mj

PBK/GSV-AN 18/01/2016 ::3P-7C::