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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.1092 of 2016

Ponnusamy @ Periya Ponnusamy

: Petitioner

Vs.

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,

Office of the District Collector and District Magistrate,

Tirunelveli District, Tirunelveli,.

3.The Superintendent of 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 connected with the detention order of the second respondent in M.H.S.Confdl.No.103/2016, dated 09.08.2016 and quash the same and direct the respondents to produce the detenu, by name, Ponnusamy @ Periya Ponnusamy, S/o.Madasami Thevar, aged about 61 years, detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.R.Alagumani

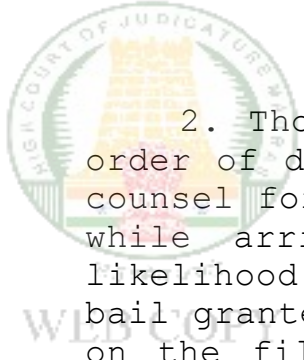
For Respondents

: Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

ORDER

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

The petitioner is the detenu - Ponnusamy @ Periya Ponnusamy, S/o.Madasami Thevar, aged about 61 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.103/2016, dated 09.08.2016, holding him to be a "Boot-legger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982.



2. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner submitted that the Detaining Authority, while arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, has relied upon the bail granted in a similar case registered in Crime No.262 of 2014, on the file of Kuruvikulam Police Station. Though the Detaining Authority has relied upon the bail granted in the said case, he has not furnished a copy of the bail application in Cr.M.P.No.6180 of 2014 filed in the said case. Therefore, non-furnishing of the document relied on would vitiate the order of detention.

3. In this regard, the learned counsel for the petitioner has also relied upon number of judgments delivered by the Division Benches of this Court, one such case relied upon by the petitioner is H.C.P.No.2433 of 2015 in the case of Shanmugavel vs. State of Tamil Nadu, wherein, this Court, by relying upon the dictum laid down by the Hon'ble Supreme Court in M.Ahamed Kutty vs. Union of India and another [1990 (2) SCC 1], has quashed the detention order. The relevant portion from the said judgment reads as follows:

"7. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case." (Emphasis added)."

4. The said Judgment is squarely applicable to the case on hand also. Therefore, following the dictum laid down by the Hon'ble Supreme Court, we hold that the impugned detention order is vitiated and the same is liable to be set aside.

5. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in <https://hccases.pnnus.gov.in/cases/> in M.H.S.Confdl.No.103/2016, dated 09.08.2016, is quashed. The detenu, namely, Ponnusamy @ Periya Ponnusamy, S/o.Madasami Thevar, aged about 61 years, is ordered to be set at



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liberty forthwith, if he is not required for detention in connection with any other case.

Sd/
Assistant Registrar(Records)

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Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District, Tirunelveli,.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public (Law &Order),
Fort st.George,Chennai.

NB

js/msk/TTN/20.01/2017/3p-6c

Order made in
H.C.P. (MD) No.1092 of 2016

Dated: 23.12.2016