



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

and

THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P(MD)No.142 of 2016

Thavamani

.. Petitioner

Vs.

The State rep by

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

Nagapattinam District,

Nagappattinam.

3.The Superintendent of Prison,

Trichy Central Prison,

Trichy 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 of the respondent No.2 in C.O.C.No.08/2016 dated 20.01.2016 and quash the same and direct the respondents to produce the body or person of the detenu by name Dharmaraj, S/o.Thavamani, aged about 25 years, now detained at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

For Petitioner

: Mr.AL.Alagumani

For Respondents

: Mr.C.Ramesh

Additional Public Prosecutor

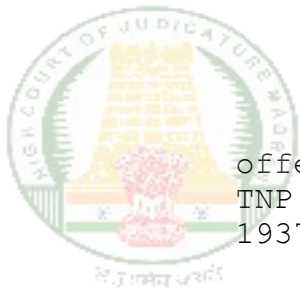
O R D E R

[Order of the Court was made by **M.V.MURALIDARAN, J. and B.GOKULDAS, J.**]

The petitioner is the father of the detenu. The detenu was detained by the second respondent by his order in C.O.C.No.08/2016 dated 20.01.2016, 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.1095 of 2015 on the file of Nagappattinam Prohibition Enforcement Wing registered for offences punishable under Sections 4(1) (aaa), 4(1)(i) r/w 4(1-A) TNP Act, 1937 and the following three adverse cases:-

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

(1) Crime No.579 of 2015 registered on the file of Nagappattinam Prohibition Enforcement Wing for an



offence punishable under Section 4(1)(aaa) r/w 4(1-A) of TNP Act, 1937, 4 & 5 TNRS Rules @ 4(1) (aaa) TNP Act, 1937, 4 & 5 TNRS Rules;

(ii) Crime No.647 of 2015 registered on the file of Nagappattinam Prohibition Enforcement Wing for an offence punishable under Section 4(1)(aaa) r/w 4(1-A) of TNP Act, 1937;

(iii) Crime No.755 of 2015 registered on the file of Nagappattinam Prohibition Enforcement Wing for an offence punishable under Section 4(1)(aaa) r/w 4(1-A) TNP Act.

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 order of detention is assailed on several grounds, the learned counsel for the petitioner primarily relies on the following contention:-

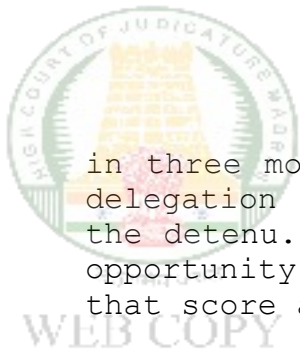
"The petitioner respectfully submit that the G.O. (D).No.26, Home, Prohibition and Excise (XVI) Department, dated 18.01.2016 are relied document and vital document relating to the Detention order.

It is submitted that on 30.01.2016, the petitioner preferred representation before the respondent No.2 and seek for the copy of the G.O.(D).No.26, Home Prohibition & Excise (xvi) Department dated 18.01.2016 forthwith for preferring effective representation and for filing a writ of certiorari for quash the above mentioned Government Order. But the same was not considered, and the respondent No.2 failed to supply the above-mentioned relied document to the petitioner. The failure on the party of the respondent No.2 is a clear case of violation of Article 22(5) of the Constitution of India."

4. We have heard the submissions made by Mr.C.Ramesh, learned Additional Public Prosecutor on behalf of the said submission made by the learned counsel for the petitioner. The submissions, thus, made by the learned Additional Public Prosecutor are also taken into consideration.

5. The learned counsel for the petitioner after taking us through the entire booklet points out the fact that the copy of G.O.(D). No.26, Home Prohibition & Excise (xvi) Department dated 18.01.2016 was not included in the booklet supplied to the detenu.

6. So far as the contention of the learned counsel for the petitioner regarding non-furnishing of the Government Order is concerned, admittedly, the power delegated to the Detaining Authority was being periodically extended by fresh Government Orders passed once



in three months and a copy of the latest Government Order extending the delegation referred to in the detention order, has not been furnished to the detenu. Non-furnishing of the same amounts to denial of a reasonable opportunity to make an effective challenge to the order of detention. On that score 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, made in C.O.C.No.08/2016 dated 20.01.2016, by the second respondent, the District Collector and District Magistrate, Office of the District Collector and District Magistrate, Nagapattinam District, Nagapattinam and directs the release of the detenu by name Dharmaraj S/o Thavamani, aged about 25 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/
Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar

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,
Office of the District Collector and District Magistrate
Nagapattinam District,
Nagapattinam.
 - 3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.(in duplicate communicate to the detenu)
 - 4.The Joint Secretary to Government,
Public (law & Order),
Fort.St.George, Chennai - 9.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1cc to M/S.R.Alagumani, Advocate in SR.No.26286

Order made in
H.C.P(MD)No.142 of 2016
Dated:- 17.05.2016

vs/pmu
PA/PEK/SAR I/01.06.2016/3P/8C