



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.150 of 2016

Kumar

: Petitioner

Vs.

1.State of Tamil Nadu, rep. By

The Secretary to Government,

Home, Prohibition and Excise Department,

Fort St. George, Chennai-9.

2.The District Collector and District Magistrate,

O/o. The District Collector and District Magistrate,

Nagapattinam District,

Nagapattinam.

3.The Superintendent of Central Prison,

Central Prison,

Tiruchirappalli.

: 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 in detention order passed in C.O.C.No.05/2016, dated 09.01.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner, namely Kumar, S/o.Singaram, male, aged 38 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.C.Ramesh,

Additional Public Prosecutor

ORDER

[Order of the Court was made by

M.V.MURALIDARAN, J., and B.GOKULDAS, J.]

The petitioner is the detenu. The detenu was detained by the second respondent by his order in C.O.C.No.05/2016, dated 09.01.2016, 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.589 of 2015 registered on the file of Puthupattinam Police Station for offences punishable under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) TNP Act 1937 and the adverse cases:-

i)Crime No.408 of 2015 registered on the file

of Puthupattinam Police Station for an offence



punishable under Section 4(1)(k) of TNP Act, 1937;

ii) Crime No.434 of 2015 registered on the file of Puthupattinam Police Station for an offence punishable under Section 4(1)(aaa) of TNP Act, 1937 and

iii) Crime No.587 of 2015 registered on the file of Puthupattinam Police Station for an offence punishable under Section 4(1)(aaa) of TNP 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 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 a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the contention that the subjective satisfaction expressed by the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case is *ipse dixit* not supported by cogent materials insofar as it does not refer to any similar case particulars.

4. 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.

5. The Detaining Authority, in the grounds of detention, while expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case made the following observations:-

"I am aware that thiru. Kumar, male, aged 38/2015, S/o.Singaram was produced before the learned Judicial Magistrate Court, Sirkazhi on 17.12.2015 and remanded in Sub-Jail, Sirkazhi as a remand prisoner on the same day itself. His remand period was expired on 31.12.2015 and further his remand period was extended upto 12.01.2016. I am aware that Thiru.Kumar, Male, aged 38/2015, S/o.Singaram is in remand in connection with the case in Pudupattinam Police Station Cr.No.589 of 2015. I am aware that he had moved a bail petition before the learned Judicial Magistrate Court, Sirkazhi in Cr.M.P.No.11663/2015 in connection with the same case and the same was dismissed by the learned Judicial Magistrate Court, Sirkazhi on 18.12.2015. Further bail petition filed before the



Sessions Judge, Nagapattinam was pending in Cr.M.P.No.50/2016, dated 05.01.2016. Hence, I am satisfied that there is a real and imminent possibility of (Thiru.Kumar, Male, aged 38/2015, S/o.Singaram) coming out on bail by filing a bail application for the above case before the High Court.

6. The above said observation, as rightly contended by the learned counsel for the petitioner, shows the pre-determination of mind on the part of the Detaining Authority that the bail petition filed before the Sessions Court, Nagapattinam in Cr.M.P.No.50/2016 will be allowed in any event without even making any reference to the similar case in which bail came to be granted. 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 dated 09.01.2016, made in C.O.C.No.05/2016, by the second respondent, the District Collector and District Magistrate, Nagapattinam District, Nagapattinam and directs the release of the detenu by name Kumar, S/o.Singaram, aged about 38 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
3. The Superintendent of Central Prison,
Central Prison, Tiruchirappalli.
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.