

**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.164 of 2016**

Manoharan

.. Petitioner

Vs.

1.State of Tamil Nadu,
represented 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,
Perambalur District,
Perambalur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

.. Respondents

Prayer:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to call for the entire records in detention order passed in Cr.M.P.No.01/2016 dated 31.01.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Manoharan, S/o Rathinam, male aged 56 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

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

For RR 1 to 3 : Mr.C.Ramesh
Additional Public Prosecutor

**ORDER**

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

WEB COPY The petitioner is the detenu. He has been detained by the second respondent by his order in Cr.M.P.No.01/2016, dated 31.01.2016, 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.25 of 2016 on the file of Perambalur PEW registered for alleged offences punishable under Sections 4(1) (aa) r/w 4(1-A) (Transport) Tamil Nadu Prohibition Act, 1937 and the following three adverse cases:

(i) Crime No.19 of 2015 registered on the file of Keelkuppan Police Station for offences punishable under Sections 353 IPC r/w 4(1) (aa) r/w 4(1-A) altered into 4 (1) (aa) of TNP Act, 1937;

(ii) Crime No.21 of 2015 registered on the file of Keelkuppam Police Station for offences punishable under Sections 4(1) (aa) r/w 4(1-A) of TNP Act, 1937; and

(iii) Crime No.05 of 2016 registered on the file of Kai Kalathur Police Station for offences punishable under Sections 4(1) (aa) r/w 4(1-A) of TNP Act, 1937.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "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 and the adverse cases, 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 third adverse case, no 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 by filing bail application, in the third adverse case, which shows non-application of mind on the part of the detaining authority in detaining the detenu.

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. In paragraph No.5 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:

"5. I am aware that Thiru Manoharan, Son of Rathinam was in remand in Perambalur PEW Cr.No.25/2016 and Kai Kalathur PS Cr.NO.05/2016 and has filed a bail application for Perambalur PEW Cr.No.25/2016 before the Principal District and Sessions Judge, Perambalur in Cr.M.P.No.46/2016 and the same was dismissed on 20.01.2016. For Perambalur PEW Cr.No.25/2016 the High Court of Judicature, Madras granted bail for in CrI.O.P.No.1684/2016, dated 29.01.2016. He is in remand in Ka Kalathur PS Cr.No.05/2016 and has not filed any bail application so far. In a similar case registered Perambalur PEW Cr.No.25/2016, bail the High Court of Madras granted bail to the accused Manoharan in CrI.O.P.No.1684/2016 on 29.01.2016 who was remanded on 11.01.2016. Hence, I inferred that it is very likely of his (Manoharan) coming out on bail by filing bail application in the above case."

6. The above highlighted portion would clearly reveal the fact that while passing the order of detention, the Detaining Authority arrived at a subjective satisfaction regarding the real possibility of the detenu coming out on bail by filing a bail application, when no bail application was filed in the third adverse case, namely, Crime No.05 of 2016 registered on the file of Kai Kalathur Police Station, which shows non-application on the part of the Detaining Authority. Therefore, 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 31.01.2016, made in Cr.M.P.No.01/2016, by the second respondent, the District Collector and District Magistrate, Perambalur District, Perambalur and directs the release of the detenu by name Manoharan, S/o.Rathinam, aged about 56 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Police, P.W.D. and Excise Department,
Fort St.George, Chennai-9.



2. The District Collector and District Magistrate,
O/o The District Collector and District Magistrate,
Perambalur District, Perambalur.
3. The Superintendent, 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.

H.C.P (MD) No.164 of 2016
17.05.2016

ps/am

SH/NGM-MP/SAR-III:02.06.2016:4P/6C