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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

and

THE HONOURABLE MR. JUSTICE B. GOKULDAS

HABEAS CORPUS PETITION (MD) No. 19 of 2016

Kavitha,
W/o. Veeran @ Balakrishnan,
No. 9, Theppakulam Street,
Sattankulam,
Sattankulam Taluk,
Thoothukudi District.

.. Petitioner

Vs.

1. State of Tamil Nadu,
Rep. By the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

.. 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 connected with the detention order passed in H.S. (M) Confdl No. 75/2015, dated 15.12.2015 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Veeran @ Balakrishnan, S/o. Mookkaiah, aged about 38 years, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr. K. Sudalaiyandi

For Respondents : Mr. C. Ramesh
Additional Public Prosecutor

ORDER

(Order of the Court was made by A. SELVAM, J)

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to call for records relating to detention order passed in H.S. (M) Confdl No. 75/2015, dated 15.12.2015 against the detenu by name Veeran @ Balakrishnan, son of Mookkaiah by the detaining authority, who has been arrayed as second respondent herein and quash the same.



2. The Inspector of Police, Thoothukudi Prohibition Enforcement Wing as sponsoring authority has submitted an affidavit to the detaining authority, wherein it is stated that the detenu has already involved in the following adverse cases:-

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(i) Crime No.75 of 2013 Sattankulam Police Station registered under Sections 468, 471 of the Indian Penal Code and 4(1)(aaa), 4(1-A) TNP Act (Transport).

(ii) Crime No.903 of 2014 Thoothukudi Prohibition Enforcement Wing registered under Sections 4(1)(aaa), read with 4(1-A), 4(1)(H) (Transporting) TNP Act read with 7, 13 and 14 of TNRS Rules 2000 and Sections 420, 468 and 328 of the Indian Penal Code and Section 66 of Central Excise Rules.

3. Further it is stated in the affidavit that on 06.11.2015, the detenu has been found in possession of 48 bottles of illicit arrack, each containing 180ml and subsequently, a case has been registered in Crime No.640 of 2015 under Sections 4(1)(a) and 4(1-A) of Tamil Nadu Prohibition Act and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

4. The detaining authority, after considering the averments made in the affidavit and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as 'Bootlegger' by way of passing the impugned order and in order to quash the same, the present petition has been filed by the wife of the detenu.

5. On the side of the respondents, a detailed counter has been filed wherein it has been clearly stated that the detaining authority, after considering the gravity of offences alleged to have been committed by the detenu and also after considering that the detenu is a professional offender, has rightly branded him as 'Bootlegger' by way of passing the impugned order and therefore the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has contended that on the side of the detenu, two representations have been submitted and the same have not been disposed of without delay and therefore the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondents has represented that the representations submitted on the side of the detenu are duly disposed of without delay and therefore the detention order in question does not call for any interference.

8. On the side of the respondents, a proforma has been submitted wherein it has been clearly stated that with regard to first representation in between Column Nos.7 to 9, thirteen clear working days are available and in between Column Nos.12 and 13, thirteen clear working days are available. Likewise, with regard to second representation in between Column Nos.7 to 9, two clear working days are available and in Column Nos.12 and 13, four clear working days are



available and no explanation has been given on the side of the respondents with regard to such delay and the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and therefore the detention order in question is liable to be quashed.

9. In fine, this Habeas Corpus Petition is allowed and the detention order passed in H.S.(M) Confdl No.75/2015, dated 15.12.2015 by the second respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Veeran @ Balakrishnan, son of Mookkaiah at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/
Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The Secretary to Government,
Rep. By the State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.(to communicate to the detenu)
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Govt.,
Public (Law & Order) Department,
Secretariat, Fort.St.George,
Chennai - 9.

+1cc to M/S.K.Sudalaiyandi, Advocate in SR.No.19924

ORDER MADE IN
H.C.P (MD) No.19 of 2016
11.04.2016