



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P. (MD) No.221 OF 2016

Nithya

... Petitioner

vs.

The State rep.by

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009

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

... 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 relating to the detention order passed by the second respondent pertaining to the order made in C.O.C.No.21/2016, dated 19.02.2016, in detaining the detainee under 2(b) of Tamil Nadu Act 14 of 1982 as a Boot Legger and quash the same and direct the respondents to produce the detainee Parameswari, w/o.Palanivel, female, aged about 45 years, who is detained at Special Prison for Women, Tiruchirappalli, before this Hon'ble Court and set her of liberty.

For Petitioner : Mr.K.M.Karunakaran

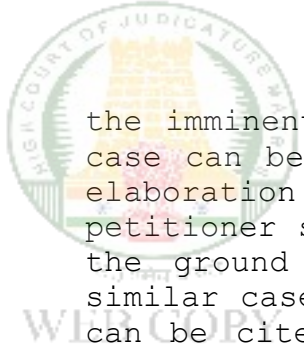
For Respondents : Mr.C.Ramesh
Additional Public Prosecutor

O R D E R

[Order of the Court was made by B.GOKULDAS, J]

The petitioner's mother Parameswari, aged about 45 years, has been detained as "Boot Legger", under Section 2(b) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982), as per the order of the second respondent, dated 19.02.2016. Challenging the same, she has come up with this Habeas Corpus Petition.

2. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner relies on the contention that the subjective satisfaction expressed by the detaining authority regarding



the imminent possibility of the detainee coming out on bail in the ground case can be even termed ipse dixit, not based by cogent materials. In elaboration of the said contention, the learned counsel for the petitioner submits that when no bail application is pending in respect of the ground case, the detaining authority referred to another case as similar case particulars. The case of a co-accused in the same case alone can be cited as a bail order in a similar case. Since the detaining authority has chosen to refer to some other order passed in some other case, when no bail application was moved on behalf of the detainee, the comparison was improper and the same will make the subjective satisfaction of the detaining authority regarding the real possibility of the detainee coming out on bail ipse dixit not supported by cogent materials.

3. The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

4. In paragraph No.5 of the grounds of detention, the detaining authority stated that there is a real possibility of her coming out on bail by filing bail application, since bail has been granted in similar cases. As rightly pointed out by the learned counsel for the petitioner, when no bail application is pending in the case in which the subjective satisfaction of the real possibility of the detainee coming out on bail is to be expressed, then the comparable order shall be an order passed in respect of a co-accused and not an order passed in any other case. The said dictum has been laid down by the Hon'ble Supreme Court in Huidrom Konungjao Singh vs. State of Manipur and others, reported in (2012) 3 MLJ (Cr1) 794 (SC). The said citation is squarely applicable to the present case. Hence, we do have no hesitation in coming to the conclusion that the comparison made for expression of subjective satisfaction is not proper and the expression of subjective satisfaction regarding the imminent possibility of the detainee coming out on bail in the ground case is only ipse dixit not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 19.02.2016, made in C.O.C.No.21/2016, by the second respondent / the District Collector and District Magistrate, Nagapattinam District, Nagapattinam and directs the release of the detainee by name Parameswari, w/o.Palanivel, female, aged about 45 years forthwith, if her custody/detention is not authorised in specific cases or by any other order of detention.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar.

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.



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

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Superintendent,
Special Prison for women,
Tiruchirappalli.(In duplicate communicate to the detenue)

5. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St. George, chennai.

Order made in
H.C.P.(MD) No.221 of 2016
18.05.2016

AM/AAL.MPA/SAR-I/02.06.2016/3P/7C