

**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.258 of 2016**

Selvam

.. 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
Distribution Magistrate,
Nagapattinam District,
Nagapattinam.

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 C.O.C.No.22/2016 dated 19.02.2016 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Selvam, S/o.Sivaperumal, Male, aged 35 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.)**

WEB COPY The petitioner is the detenu. The detenu was detained by the second respondent by his order in C.O.C.No.22/2016 dated 19.02.2016, 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.29 of 2016 on the file of Manalmedu Police Station registered for the offences punishable under Sections 4(1)(i), 4(1)(aaa) read with 4(1-A) of TNP Act, 1937 and the following three adverse cases:-

(i) Crime No.13 of 2015 registered on the file of Manalmedu Police Station for an offence punishable under Section 4(1)(aaa) of TNP Act, 1937;

(ii) Crime No.68 of 2015 registered on the file of Manalmedu Police Station for the offences punishable under Sections 4(1)(aaa) r/w 4(1-A) of TNP Act, 1937(Transport) and

(iii) Crime No.16 of 2016 registered on the file of Manalmedu 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 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 a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the following contention:-

"There was denial of reasonable opportunity to challenge the order of detention in an effective manner by the non-supply of a copy of the Government Order extending the delegation of power to the Detaining Authority. The failure to supply a copy of the Government Order even after a representation was made in writing seeking supply of the same amounts to denial of reasonable opportunity vitiating the order of detention itself."

4. 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.



5. So far as the contention of the learned counsel for the petitioner regarding the 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, which has been referred to in the detention order, has not been furnished to the detenu. Though non-furnishing of the same initially may not be taken serious note of, when a representation is made seeking supply of a copy of the said Government Order to make an effective challenge to the detention order, such request ought to have been considered properly and the failure to do so and the mechanical rejection of such request amounts to denial of 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.

6. 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.22/2016, 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 Selvam, Son of Sivaperumal, aged about 35 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Vacation Officer /
Assistant Registrar

/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 Distribution Magistrate,
Nagapattinam District, Nagapattinam.
3. The Superintendent, Central Prison, Tiruchirappalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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