



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P(MD)No.580 of 2016

Selvakumari

: Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

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

3.The Superintendent,
Central Prison,
Tiruchirapalli.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the record relating to the second respondent, pertaining to the detention order made in C.O.C.No.18/2016, dated 16.02.2016, in detaining the detenu under Tamil Nadu Act 14/1982 as "Boot Leggers" and quash the same and direct the respondents to produce the said detenu, namely Othakaivarathan @ Varatharajan, S/o.Ramamoorthy, aged about 46 years, who is detained at Central Prison, Trichy, before this Court and set him at liberty.

For Petitioner : Mr.N.Anandakumar,
For Mr.V.Malaiyendran
For Respondents : Mr.A.Ramar,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

This Habeas Corpus Petition is filed by the wife of the detenu, by name Othakaivarathan @ Varatharajan, who is detained at the Central Prison, Tiruchirapalli, pursuant to the order of detention dated 16 February, 2016 on the file of District Collector and District Magistrate, Nagapattinam.



2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the State.

3. The husband of the petitioner (hereinafter referred to as 'the detenu'] was involved in a case in Crime No.276 of 2015 on the file of Thittacherry Police Station. The police alleged that the detenu transported about 140 litres of illicit arrack from Puducherry and thereby, involved in an offence punishable under the Tamil Nadu Prohibition Act. He was given anticipatory bail by the High Court, in CrI.O.P.No.26325 of 2015.

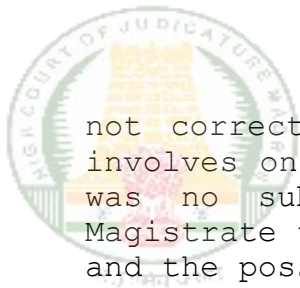
4. The detenu was involved in a similar case in Crime No.340 of 2015 on the file of Keelaiyur Police Station. The police alleged that the detenu transported brandy and arrack in a Ford Icon Car on 25.12.2015. The detenu obtained anticipatory bail from the High Court in CrI.O.P.No.318 of 2016.

5. Subsequently, the Sub Inspector of Police, Thirukkuvalai Police Station (i/c) Prohibition Enforcement Wing, Nagapattinam registered a case against the petitioner on account of his involvement in a case of transportation of illicit arrack. The police registered a case in Crime No.108 of 2016 on 02.02.2016. The learned District Magistrate, on the basis of the materials available on record, passed the order of detention opining that there is every likelihood of committing similar offences, in case the detenu is released on bail.

6. We have perused the grounds of detention and the details of the adverse cases and the ground case.

7. The records produced by the Detaining Authority shows that the detenu was arrested at 08.30 a.m., on 02.02.2016. The police seized the illicit arrack and samples were drawn at 10.30 a.m., on 02.02.2016. However, the First Information Report was registered only at 11.30 a.m., on 02.02.2016. This vital fact was not considered by the Detaining Authority, while arriving at a subjective satisfaction with regard to the possibility of involvement in similar cases by the detenu in future, in case he is released on bail.

8. The Detaining Authority observed that the bail petition filed by the detenu before the learned Judicial Magistrate No.II, Nagapattinam, in Cr.M.P.No.181 of 2016 was dismissed. Thereafter, he filed a petition before the learned Sessions Judge, Nagapattinam in Cr.M.P.No.452 of 2016. The application was kept pending. The Detaining Authority observed that the accused earlier obtained bail from the High Court in CrI.O.P.No.26325 of 2015. The said order was taken note of by the learned District Magistrate to arrive at a satisfaction that there is every possibility of the detenu coming out on bail by getting a favourable order in CrI.M.P.No.452 of 2016. The order dated 27 October, 2015 in CrI.O.P.No.26325 of 2015 indicates that the detenu was not involved in any other previous case. Since the offence was under Section 4(1)(aaa) of Tamil Nadu Prohibition Act, the learned Judge granted him anticipatory bail. While passing the order of detention, the Detaining Authority failed to note that the ground case in Crime No.108 of 2016 was under Section 4(1)(aaa), 4(1)(i) r/w 4(1-A) of Tamil Nadu Prohibition Act. Since serious offences were included, the learned District Magistrate was



not correct in comparing the ground case with the adverse case, which involves only a lesser offence. We are, therefore, of the view that there was no subjective satisfaction arrived at by the learned District Magistrate with regard to the likelihood of the detenu coming out on bail and the possibility of indulging in similar illegal activities in future.

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9. In *Rekha Vs. State of Tamil Nadu*, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

10. In view of the aforesaid reasons, the impugned Detention Order, passed by the second respondent, in his proceedings in C.O.C.No.18/2016, dated 16.02.2016, is quashed. The detenu, namely, Othakaivarathan @ Varatharajan, S/o.Ramamoorthy, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

11. In the upshot, we allow the Habeas Corpus Petition.

Sd/

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Secretary,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector and
District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent,
Central Prison,
Tiruchirapalli.(In duplicate communicate to detenu)
- 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St. George, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P (MD) No.580 of 2016
Dated:
30.06.2016