

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

H.C.P.No.1311 of 2017

S.Mythili

.. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition, Excise Department,
Fort St. George,
Chennai-9.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records relating to the detention order dated 02.03.2017 made in C.O.C.No.11/2017 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body of the detenu Sakthivel, aged 35 years, S/o.Subramaniyan, who has been detained in Central Prison, Tiruchirappalli before this Hon'ble Court and set at liberty.

For Petitioner : Mr.J.Muthukumaran

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

O R D E R

[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 the detention order passed in C.O.C.No.11/2017 dated 02.03.2017 by the Detaining Authority against the detenu by name, Sakthivel, aged 35 years, S/o.Subramaniyan, residing at Rottu Street, Anthakudi & Post, Kilvelur Police Station Limit, Kilvelur Taluk, Nagapattinam District and quash the same.

2. The Inspector of Police, Prohibition Enforcement Wing,

Nagapattinam, as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detenu has involved in the following adverse cases :

- i. Nagapattinam PEW Crime No.55/2017 under Sections 4[1][aaa] r/w 4[1-A] of Tamil Nadu Prohibition Act, 1937.
- ii. Kilvelur Police Station Crime No.86/2017 under Sections 4[1][aaa] r/w 4[1-A] of Tamil Nadu Prohibition Act, 1937.

3. Further, it is averred in the affidavit that on 09.02.2017, the Inspector of Police, Prohibition Enforcement Wing, Vedaraniyam incharge of Prohibition Enforcement Wing, Nagapattinam and other police officials, have conducted prohibition raid and ultimately, found in the place of occurrence, the detenu has been found in possession of illicit poisonous arrack and after observing due formalities, a case has been registered in Crime No.186/2017 under Sections 4[1][i], 4[1]aaa r/w 4[1-A] of Tamil Nadu Prohibition Act, 1937 and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

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

5. On the side of the respondents, counter has not been filed and therefore, the present Habeas Corpus Petition is disposed of on merits on the basis of available materials on record.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, a representation has been submitted to the concerned authorities, but the same has not yet been disposed of and therefore, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has contended to the effect that on the side of the detenu, no representation has been received and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

8. It is seen from the records that on 08.06.2017, a representation has been given to the concerned authorities and necessary postal receipts have also been annexed herein.

Therefore, it goes without saying that on the side of the detenu, a representation has been submitted, but the concerned authorities have not yet disposed of 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 petition is allowed. The Detention Order dated 02.03.2017 passed in C.O.C.No.11/2017 by the Detaining Authority against the detenu by name, Sakthivel, aged 35 years, S/o.Subramaniyan, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
- 2.The Secretary to the Government,
Home, Prohibition, Excise Department,
Secretariat, Chennai-9.
- 3.The District Collector and the District Magistrate,
Nagapattinam District,
Nagapattinam.
- 4.The Superintendent,
Central Prison, Tiruchirappalli.
[in duplicate for communication to the detenu]
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1311 of 2017

GP(CO)
GN(19/09/2017)