

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.08.2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.30 of 2017

Sankar Petitioner

vs.

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

2.The District Magistrate and District Collector,
Vellore District,
Vellore-632 009 ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records of the second respondent, pertaining to the order made in C3/D.O.No.81/2016, dated 15.12.2016,, in detaining the detenu under the Tamil Nadu Act 14 of 1982, as a Bootlegger and quash the same and direct the respondents to produce Sankar, son of Munisamy, detained at the Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.O.S.Thilak Pasumbadiar

For Respondents : Mr.V.M.R.Rajentran, Addl.P.P.

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 the records relating to detention order passed in No.C3/D.O.No.81/2016, dated 15.12.2016, by the detaining authority against the detenu, by name Sankar, aged 49 years, S/o Munisamy, residing at Madapalli Colony, Madavalam Post, Tirupattur Taluk, Vellore District and quash the same.

2. The Inspector of Police, Tirupattur Taluk Police Station, 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. Tirupattur Taluk Police Station, Cr.No.60 of 2016, registered under Sections 4(1)(aaa), 4(1-

- A)ii of TNP Act, altered into Section 4(1)aaa of TNP Act, 1937.
- ii.Tirupattur Taluk Police Station, Cr.No.175 of 2016, registered under Sections 4(1)(aaa), 4(1-A)ii of TNP Act, altered into Section 4(1)aaa of TNP Act, 1937.
- iii.Tirupattur Taluk Police Station, Cr.No.626 of 2016, registered under Sections 4(1)aa, 4(1-A)ii of TNP Act, altered into Section 4(1)aaa of TNP Act, 1937.

3. Further, it is averred in the affidavit that on 10.11.2016, the Inspector of Police, Tirupattur Taluk Police Station and other police officials have made a vehicle check up and the detenu has been found in possession of some quantity of poisonous arrack and after observing due formalities, a case has been registered against the detenu in Crime No.722 of 2016 under Sections 4(1)(i), 4(1)(aaa), 4(1-A)ii of the Tamil Nadu Prohibition Act, 1937, read with Section 328 of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

4. The detaining authority, after perusing 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 a 'Bootlegger' by way of passing the impugned detention order and in order to quash the same, the detenu himself has filed the present petition.

5.Despite of repeated adjournments, the respondents have not chosen to file counter and therefore, the present petition is disposed of on merits on the basis of available materials on record.

6.The learned counsel appearing for the petitioner/detenu has contended to the effect that on the side of the detenu, a representation has been given to the concerned District Collector as well as Jail Superintendent, but the same has not been disposed of without delay and in such circumstances, the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondents has contended that on the side of the petitioner/detenu, representation has not been submitted and therefore, the question of disposing of the same does not arise and as such, the contention put forth on the side of the petitioner/detenu is liable to be rejected.

8.On the side of the petitioner/detenu, a copy of the representation dated 22.12.2016, has been submitted along with other reliable documents. Considering the aforesaid factual circumstances, it is easily discernible to the effect that on the side of the petitioner/detenu, a representation has been submitted to the concerned District Collector as well as the

concerned Jail Superintendent. But the same has not been disposed of and the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and on that ground alone, the detention order in question is liable to be quashed.

In fine, this Habeas Corpus Petition is allowed. The detention order dated 15.12.2016, passed in No.C3/D.O.No.81/2016, by the detaining authority against the detenu, by name Sankar, aged 49 years, S/o Munisamy, residing at Madapalli Colony, Madavalam Post, Tirupattur Taluk, Vellore District, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

- 1.The Joint Secretary to Government of Tamil Nadu, Public (Law and Order) Department, Secretariat, Chennai-9.
- 2.The Secretary to Government, Home Prohibition and Excise Department, Fort St.George, Chennai-9.
- 3.The District Magistrate and District Collector, Vellore District, Vellore-632 009
- 4.The Superintendent, Central Prison, Vellore. (In Duplicate)
- 5.The Public Prosecutor, High Court, Madras

H.C.P.No.30 of 2017

nm1 (co)
ss(18/8/2017)