

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.09.2017

CORAM

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

H.C.P.No.581 of 2017

J.Kengammal .. 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 Collector and District Magistrate,
Cuddalore District,
Cuddalore.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to direct the respondents to produce the petitioner's husband Jayabal, aged 37 years, S/o.Kasinathan, is now detained in Central Prison, Cuddalore in pursuance of the detention order passed by the 2nd respondent on 15.03.2017 in C3/D.O/07/2017 before this Hon'ble Court and call for the records, set aside the order and set the detenu at liberty.

For Petitioner : Mr.L.Baskaran
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 C3/D.O/07/2017 dated 15.03.2017 by the Detaining Authority against the detenu by name, Jayabal, aged 37 years, S/o.Kasinathan, residing at Kathavarayankoil Street, P.N.Palayam, Melpattampakkam, Panruti Taluk, Cuddalore District and quash the same.

2. The Inspector of Police, Prohibition Enforcement Wing, Panruti 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. Panruti PEW Crime No.35/2016 registered under Sections
- ii. 4[1][aa] and 4[1-A] of Tamil Nadu Prohibition Act, 1937.
- iii. Panruti PEW Crime No.669/2016 registered under Sections
- iv. 4[1][a] and 14A of Tamil Nadu Prohibition Act, 1937.
- v. Panruti PEW Crime No.125/2017 registered under Sections
- vi. 4[1][aaa] and 4[1-A] of Tamil Nadu Prohibition Act, 1937.
- vii. Panruti PEW Crime No.131/2017 registered under Sections
- viii. 4[1][a] and 4[1-A] of Tamil Nadu Prohibition Act, 1937.

3. Further, it is averred in the affidavit that on 26.02.2017, at about 18.00 hrs, the Inspector of Police, Prohibition Enforcement Wing, Panruti and other police constables have conducted prohibition raid. During the course of raid, they found the detenu in possession of illicit arrack and after observing due formalities, a case has been registered in Crime No.137/2017 under Sections 4[1][aaa], 4[1-A] and 14-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 perusing the averments made in the affidavit and other connected documents, has arrived at 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 the detenu has been supplied with a booklet. But, at page No.64, a copy of the arrest memo is available, wherein, it has been simply stated that over cellphone, the factum of arrest has been intimated to the wife of the detenu. But to prove the same, no materials are not available and therefore, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has contended that the factum of arrest has been duly intimated to the wife of the detenu through cellphone and no prejudice would be caused to the

detenu and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

8. In fact, this Court has perused page Nos.64 and 65 of the booklet, wherein, copy of the arrest memo is available. As rightly pointed out on the side of the petitioner, in the arrest memo, it has been simply stated to the effect that the factum of arrest has been intimated to the wife of the detenu through cellphone. But, no material facts are available for the purpose of proving it. Since no materials are available for the purpose of proving the alleged fact that that arrest has been intimated to the wife of the detenu, it is needless to say that the factum of arrest has not been intimated to the wife of the detenu or near relatives and the same would cause prejudice to the detenu and therefore, the Detention Order in question is liable to be quashed.

9. In fine, this petition is allowed. The Detention Order dated 15.03.2017 passed in C3/D.O/07/2017 by the Detaining Authority against the detenu by name, Jayabal, aged 37 years, S/o.Kasinathan, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gya

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

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

3.The Superintendent,
Central Prison, Cuddalore.
[in duplicate for communication to the detenu]

4.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.L.Baskaran, Advocate in sr.no.67286

H.C.P.No.581 of 2017

MG (CO)
NR 15/09/2017



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