

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.07.2017

CORAM

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

H.C.P.No.9 of 2017

D.Ganesan

... Petitioner

Vs

1.The Secretary to the Government,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai-9.

2.The District Collector and District Magistrate,  
Office of the District Collector,  
Krishnagiri,  
Krishnagiri District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records in S.C.No.60/2016 on the file of the 2<sup>nd</sup> respondent, quash the order of detention dated 16.12.2016 and direct the production of the detenu detained in Central Prison, Salem under Section 2[f] of the Tamil Nadu Act 14 of 1982 before this Hon'ble Court and set the detenu D.Moorthy, Male, aged 34 years, S/o.Duraisamy at liberty.

For Petitioner : Mr.R.John Sathyan

For Respondents : Mr.V.M.R.Rajentran,  
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 S.C.No.60/2016 dated 16.12.2016 by the Detaining Authority against the detenu by name, D.Moorthy, S/o.Duraisamy and quash the same.

2. The Inspector of Police, Prohibition Enforcement Wing, Krishnagiri 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. Krishnagiri PEW Crime No.372/2014 registered under Section 4[1][a] of TNP Act, 1937.
- ii. Krishnagiri PEW Crime No.784/2014 registered under Section 4[1][a] of TNP Act, 1937.
- iii. Krishnagiri PEW Crime No.724/2015 registered under Section 4[1][a] of TNP Act, 1937.
- iv. Krishnagiri PEW Crime No.792/2015 registered under Section 4[1][a] of TNP Act, 1937.
- v. Krishnagiri PEW Crime No.08/2016 registered under Section 4[1][k] of TNP Act, 1937.
- vi. Krishnagiri PEW Crime No.839/2016 registered under Section 4[1][a] of TNP Act, 1937.

3. Further, it is averred in the affidavit that on 16.11.2016, on the basis of reliable information, the Inspector of Police, Prohibition Enforcement Wing, Krishnagiri and others have made vehicle check up and ultimately, found the detenu in possession of liquor without any license and consequently, registered a case in Crime No.1201/2016 under Sections 4[1][a] r/w 4[1-A] of TNP Act, 1937 and requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

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

5. On the side of the respondents, counter has been filed, wherein, it has been contended inter alia to the effect that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the materials to the Detaining Authority. The Detaining Authority after considering the same, has rightly branded the detenu as bootlegger by way of passing the impugned Detention Order and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has raised the following grounds :

- i. The factum of arrest of the detenu has not been intimated to anybody.
- ii. The detenu has been furnished illegible copies of some documents.
- iii. Copies of relied upon documents have not been furnished to the detenu.

7. Learned Additional Public Prosecutor has contended to the effect that the Sponsoring Authority has supplied all the materials to the Detaining Authority. The Detaining Authority after considering all the relevant materials, has arrived to a subjective satisfaction to the effect that the detenu is a professional offender and ultimately, passed the impugned Detention Order and the same does not require any interference.

8. The first and foremost point raised on the side of the petitioner is that the factum of arrest has not been intimated to anybody.

9. In fact, this Court has grouped the entire booklet and ultimately, found that the factum of arrest has not been intimated to anybody.

10. The second ground urged on the side of the petitioner is that the detenu has been furnished with some illegible copies of documents.

11. As rightly pointed out on the side of the petitioner, this Court has analysed the concerned booklet and found that some of the copies are not readable.

12. The third point urged on the side of the petitioner is that copies of relied upon documents have not been furnished to the detenu.

13. In fact, the Detaining Authority has relied upon previous bail applications. But, copies of the same are not found in the booklet. Therefore, it is quite clear that copies of relied upon documents have not been furnished to the detenu.

14. Considering the points raised on the side of the petitioner, this Court is of the view that both the Sponsoring Authority and Detaining Authority have committed certain lapses. Since the factum of arrest has not been intimated to anybody and since, legible copies have not been furnished and since, the copies of relied upon documents have not been furnished, this Court is of the view that the lapses committed by both the Sponsoring as well as the Detaining Authority would affect the rights of the detenu guaranteed under Article 22[5] of the Constitution of India and the same would be sufficient to quash the Detention Order in question.

15. In fine, this petition is allowed and the Detention Order dated 16.12.2016 passed in S.C.No.60/2016 by the Detaining Authority against the detenu by name, D.Moorthy, S/o.Duraisamy, residing at Periyathambi Kottai, Veppalampatti Village, Anakodi Post, Pochampalli Taluk, Krishnagiri District is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai-9.

2.The District Collector and District Magistrate,  
Office of the District Collector,  
Krishnagiri,  
Krishnagiri District.

3.The Public Prosecutor,  
High Court, Madras.

4.The Joint Secretary to Government,  
Public (L& O), Secretariat, Fort St.George,  
Chennai-9.

5.The Superintendent, Central Prison,  
Salem. (In Duplicate for Communication  
to the Detenue)

+1cc to M/s.R.John Sathyan, Advocate sr.46943

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ss(6/7/2017)