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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P(MD)No.100 of 2017

Pownthai

.. Petitioner

Vs.

1.The District Collector and District Magistrate
Theni District, Theni.

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

3.The Inspector of Police
Theni Prohibition Enforcement Wing,
IC Uthammapalayam Prohibition
Enforcement Wing, Theni District

4.The Superintendent of Prison,
Central Prison, Madurai District

.. Respondents

PRAYER: 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 person or body of the detenu, namely, Kajendran, aged about 50 years son of Pandi before this Court, who is now detained in the Central Prison, Madurai in pursuant to the detention order passed by the 1st respondent in No.10/2016/C3 dated 02.09.2016 and to call for the records and quash the same and release the detenu at liberty forthwith.

For Petitioner	: Mr.N.Mohideen Basha
For Respondents	: Mr.C.Ramesh
	Additional Public Prosecutor.

O R D E R

[Order of the Court was made by **S.NAGAMUTHU, J**]

The petitioner is the wife of the detenu, namely, Kajendran, aged about 50 years son of Pandi. The detenu has been detained under the Tamil Nadu Act 14 of 1982 as per the order of the 1st respondent in his proceedings in No.10/2016/C3 dated



02.09.2016, branding him as "Bootlegger" under Section 2(b) of the Tamil Nadu Act 14 of 1982. Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

3. Though several grounds have been raised in this petition, the learned counsel for the petitioner would focus his argument mainly on the ground that the satisfaction arrived at by the Detaining Authority that there was a real possibility of the detenu coming out on bail is totally baseless. He would submit that earlier bail application was granted and later on, it was cancelled by the Principal District and Sessions Court, Theni. It is further submitted that when there was no further bail application at all filed by the detenu, question of the detenu coming out on bail does not arise. Thus, there was no real possibility at all for the detenu to come out on bail, the learned counsel contended.

4. The learned Additional Public Prosecutor would, however, oppose this petition. According to him, the detenu is involved in a case for offence under Section 4(1)(a) & 4(1)(A) of Tamil Nadu Prohibition Act. He would further submit that there was every possibility for the detenu to move application for bail either before the Court of Sessions or before the High Court, in which, there was every possibility for him to come out on bail, because in similar cases, similarly placed persons were granted bail either by the Sessions Court or by the High Court.

5. We have considered the above submissions.

6. If an application for bail is moved, before any competent Court by the detenu, then only, question of coming out on bail would arise. In such a situation, the Detaining Authority may be satisfied that there is a real possibility of the detenu coming out on bail based on the fact that in similar cases, similarly placed persons have been granted bail. But, in this case, there was no such bail application filed by the detenu. There was no attempt also made by any of his relatives to move any application for bail. When that be so, absolutely, there was no real possibility of the detenu coming out on bail. Accordingly, the satisfaction arrived by the detaining authority is totally baseless. In such view of the matter, the detention order is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and the Detention Order of Detention in No.10/2016/C3 dated 02.09.2016 passed by the 1st respondent, is quashed. The Detenu, Kajendran, aged about 50 years son of Pandi, is directed to be released



forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS II)

/True Copy/

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Sub Assistant Registrar

To

1.The District Collector and District Magistrate
Theni District, Theni.

2.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai

3.The Inspector of Police
Theni Prohibition Enforcement Wing,
IC Uthammapalayam Prohibition
Enforcement Wing, Theni District

4.The Superintendent of Prison,
Central Prison, Madurai District

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

6.The Joint Secretary to Government,
Public (Law&Order)
Fort St.George, Chenna-9.

+1cc to Mr.N.Mohideen Basha, Advocate, SR.54078

H.C.P (MD) No.100 of 2017
26.04.2017

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