



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2017

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

H.C.P. (MD) No. 1161 of 2017

Murasolimaran : Petitioner

Vs.

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

2. The District Collector and District Magistrate
O/o the District Collector and District Magistrate
Nagapattinam District, Nagapattinam.

3. The Superintendent,
Central Prison, Tiruchirappalli. : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records in detention order passed in C.O.C.No.51/2017 dated 25.07.2017 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely, Murasolimaran, S/o. Ganapathy, male aged 34 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr. K.A.S. Prabhu

For Respondents : Mr. C. Ramesh

Additional Public Prosecutor

ORDER

[Order of the Court was made by R. SUBBIAH, J]

The petitioner is the detenu viz. Murasolimaran, son of Ganapathi, aged about 34 years. The detenu has been detained, as per the order of the second respondent, dated 25.07.2017, under Section 2(b) of the Tamil Nadu Act 14 of 1982, branding him as "Bootlegger". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.

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



3. When the matter was taken up for consideration, among other grounds, the learned counsel for the petitioner, by inviting the attention of this Court to Paragraph No.6 of the detention order, submitted that the Detaining authority, while arriving at a subjective satisfaction, has observed that the bail application filed by the detenu before this Court is pending and after having observed that the bail application is pending, again, the detaining authority, while arriving at a subjective satisfaction in the very same Paragraph, stated that he has satisfied that there is a real and imminent possibility of the detenu coming out on bail by filing a bail application before this Court. The learned counsel submitted that when the bail application is already pending and therefore, the question of filing further application does not arise, while the detaining authority has observed that the pendency of CrI.O.P. No.14177/2017 and thereafter, it shows that there is a possibility of coming out on bail, which would show that the order was mechanically passed without application of mind, which would vitiate the detention order.

4. We have heard the learned Additional Public Prosecutor appearing for the State and perused the records carefully.

5. In Paragraph No.6 of the detention order, it is stated as follows:

"6. I am aware that Thiru.Murasolimaran, male aged 34/2017, s/o.Ganapathy was produced before the learned Judicial Magistrate Court No.II, Mayiladuthurai on 22.06.2017 and remanded in Sub Jail, Mayiladuthurai as a remand prisoner on the same day itself. His remand period was expired on 06.07.2017 and further his remand period was extended upto 20.07.2017 and further his remand period was extended upto 03.08.2017. I am aware Thiru.Murasolimaran, Male aged 34/2017, S/o.Ganapathy is in remand in connection with the case in Perambur Police Station, Cr.No.242/2017. I am aware that he had moved a bail petition before the learned Judicial Magistrate Court No.II, Mayiladuthurai in Cr.M.P.No.3040/2017 in connection with the above case and the same was dismissed by the learned Judicial Magistrate Court No.II, on 23.06.2017. Further bail petition filed before the Sessions Judge, Nagapattinam, was dismissed in Cr.M.P.No.1844/2017, Chennai, was pending in CrI.O.P.No.14177/2017 dated 18.07.2017. Further, u/s 4(1) (aaa) r/w 4(1-A) TNP ACT 1937 Thiru.Murasolimaran, male aged 34/2017 S/o.Ganapathy was arrested and remanded on 24.04.2017 and later released on bail by the District and Sessions Judge, Nagapattinam in Cr.M.P.No.1105/2017 dated 04.05.2017. Hence, I am satisfied that there is a real and imminent possibility of his coming out on bail by filing a bail application for the above case before the Higher Court. If he comes out on bail, he will indulge in such further activities, which will be prejudicial to the



maintenance of public order and public health. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order and public health. On the materials placed before me, I am fully satisfied that the said Thiru.Murasolimaran, Male aged 34/2017, S/o.Ganapathy is a Bootlegger and there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order and public health under the provisions of the Tamil Nadu Act 14 of 1982."

6. We find some force in the submission made by the learned counsel for the petitioner that when the bail application is pending, question of filing another application does not arise. On this ground, the detention order is liable to be aside.

7. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in C.O.C.No.51/2017 dated 25.07.2017, is quashed. The detenu, namely, Murasolimaran, S/o.Ganapathy, aged about 34 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary to Government
Home, Prohibition and Excise Department,
Fort st. George, Chennai - 9.
- 2.The District Collector and District Magistrate
O/o the District Collector and District Magistrate
Nagapattinam District, Nagapattinam.
- 3.The Superintendent,
Central Prison, Tiruchirappalli.
- 4.The Joint Secretary to Government, Public (Law and Order),
Fort Saint George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

RR

RL/6C/3P/JC/SAR1/8/1/2018

Order made in
H.C.P. (MD) No.1161 of 2017