



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P. (MD) .No.192 of 2017

Kalaiselvi

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep by The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.

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 to issue a Writ of Habeas Corpus calling for the entire records in detention order passed in C.O.C.No.05/2017 dated 30.01.2017 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Kattakazhi @ Durairaj, S/o.Jayaraman, male, aged 36 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.Mayilvahana Rajendran Additional Public Prosecutor

O R D E R

[Order of the Court was made by **M.V.MURALIDARAN., J.**]

The petitioner is the wife of the detenu namely, Kattakazhi @ Durairaj. The detenu has been detained by the 2nd respondent by order in C.O.C.No.05/2017, dated 30.01.2017, holding the detenu to be a "Boot-legger", as contemplated under Section 2(b) of Tamil Nadu Habitual Offenders Act, 1982. The said order is under challenge in this Habeas Corpus Petition.



2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. It is also stated by the learned counsel for the petitioner that it is stated in the Detention Order that there is a real possibility of the detenu coming out on bail by filing bail application without enclosing other relevant documents is a vitiating circumstance and the Detention Order passed cannot be sustained.

3. The learned Additional Public Prosecutor submitted that the detaining authority has rightly appreciated the facts in the grounds of detention.

4. We have considered the said submissions.

5. This Court in **HCP (MD) No. 979 of 2011 dated 14.12.2011**, considered the very issue in paragraph Nos. 13 and 14 and held thus:

"13. Even though the Detaining Authority had stated, in the grounds of detention, that there is an imminent or a real possibility of the detenu coming out on bail, there is nothing available on record to substantiate such a claim. Unless, there are sufficient and cogent materials for the Detaining Authority to arrive at his conclusion that there is an imminent or a real possibility of the detenu coming out on bail and indulging in activities, which would be prejudicial to the maintenance of public order, the conclusion of the Detaining Authority would be a mere *ipse dixit* and as such, the conclusion arrived at by the Detaining Authority cannot be held to be valid in the eye of law.

14. Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail. In the present case, it has not been shown that all the relevant materials relating to the similar cases, referred to by the Detaining Authority had been furnished to the detenu, in order to enable him to make an effective representation against the detention order. The failure of the Detaining Authority to furnish all the materials would, no doubt, cause substantial prejudice to the detenu, resulting in the failure on the part of the Detaining Authority in following the mandate, enshrined in Clause (5) of the Article 22 of the Constitution of India."

6. In a similar case, bail has been granted and the detenu is released on bail in the pending bail application in Cr.M.P.No.244 of 2017. There is no material available before the detaining authority to arrive at such a conclusion. The Supreme

Court in the decision reported in **2011 (4) SCC 260 (Rekha v. State of Tamil Nadu)** held that in the absence of material particulars in similar cases the detaining authority shall not rely on the said statement made by the sponsoring authority.

7. In the light of the said undisputed facts and the decisions of this Court and the Hon'ble Supreme Court stated supra, the Detention Order passed against the detenu is liable to be set aside. Accordingly, the Detention Order dated 30.01.2017 is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-

ASSISTANT REGISTRAR (AD-II)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
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 & Order)
Fort St. George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Ns/RR

MAS/KP/SAR2:02.06.2017:3P-6C

ORDER MADE IN
H.C.P (MD) No.192 of 2017
Dated: **23.05.2017**