



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.416 of 2017

Arjunan

... Petitioner

-vs-

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

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

3.The Superintendent,
Special Prison for Women,
Tiruchirappalli,
Tiruchirappalli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order of detention made in C.O.C.No.13/2017 dated 02.03.2017 on the file of the District Collector and District Magistrate, Nagapattinam District, the second respondent herein, branding the detenu by name Tmt.Rani, aged about 38 years, W/o.Arjunan, as "BOOTLEGGER", who is now confirmed in Special Prison for Women, Tiruchirappalli and quash the impugned order of detention by setting aside the same and set her at liberty by producing her before this Court.

For Petitioner : Mr.R.Ilayaraja

For Respondents : Mr.T.Mohan
Additional Public Prosecutor

O R D E R

[Order of the Court by M.M.SUNDRESH, J.]

The petitioner is the husband of the detenu, namely, Rani, aged about 38 years. The detenu has been detained by the second respondent by his order in C.O.C.No.13 of 2017, dated 02.03.2017 holding him to be a "Boot Legger", as contemplated under Section 2 (b) of Tamil Nadu Act 14 of 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 appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. The learned counsel for the petitioner would submit that the detention order is said to be predicated on the ground that there is a non-application of mind on the part of the detaining authority that the subject satisfaction have arrived on the premise that the detenu would file a bail application before the higher Court. Admittedly, the bail application filed in the ground case was pending at the time of passing the detention order in Cr.M.P.No.536 of 2017. Therefore, there is no question of likelihood of filing the bail application before the higher Court and no where it has been stated that in all possibility pending bail application would be allowed. Thus, we are of the view that there is a non-application of mind.

4. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

5. On a perusal of the impugned order of detention, we find that the Detaining Authority has stated that there was a real possibility of the detenu coming out on bail. Admittedly, at the time of passing the Detention Order, no bail application was pending. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed mechanically without application of mind. Therefore, on this ground, the detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.O.C.No.13/2017, dated 02.03.2017, passed by the second respondent is set aside. The detenu, namely, Rani, Wife of Arjunan, aged about 38 years, is directed to be released forthwith unless her detention is required in connection with any other case.

Sd/-

Assistant Registrar(C.O)



To:

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

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

3.The Superintendent,
Special Prison for Women,
Tiruchirappalli,
Tiruchirappalli District.

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

Am

RL/5C/3P/JC/SAR2/7/9/2017

H.C.P. (MD) No.416 of 2017

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