



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**
and
THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

H.C.P(MD)No.48 of 2017

Gomathi

.. Petitioner

Vs.

1. State of Tamilnadu,
represented 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 of Prison,
Central Prison,
Tiruchirappalli.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records of detention order passed in C.O.C.No.01 of 2017, dated 02.01.2017 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, Murugavel, S/o. Kaliyaperumal, aged about 33 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

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

For Respondents : Mr.C.Ramesh

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. The detenu has been detained by the second respondent, by his proceedings in C.O.C.No.01/2017, dated 02.01.2017, branding him as a "**Boot** **Legger**" 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. Though several grounds have been raised in this petition, the learned counsel for the petitioner would submit that the subjective satisfaction arrived at by the Detaining Authority in paragraph 6 of the detention order that there was real possibility of the detenu coming out on bail and it was based on no material and thus, the so called satisfaction arrived at by the Detaining Authority is arbitrary. In order to substantiate the said contention, the learned counsel would point out that as against the detenu, there was one adverse case and one ground case. In the adverse case, the detenu had moved application for bail and he was granted bail. So far as the ground case in Crime No.437 of 2016 is concerned, there was no bail application filed by the detenu at all, but still, the Detaining Authority has held that there was real possibility of the detenu coming out on bail, in future, if he files bail application in the ground case.

3. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

4. This satisfaction arrived at by the Detaining Authority, in our considered view, is not based on any material. When there was no bail application at all moved, there was no possibility for the detenu to come out on bail. Hence, on the ground of non-application of mind, the expression of subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case stands vitiated and the same can be termed as *ipse dixit*, not supported by cogent materials. On that ground alone, the detention order is liable to be set aside.

5. 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.01 of 2017, dated 02.01.2017 is quashed. The detenu, namely, Murugavel, S/o.Kaliyaperumal, aged 33 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

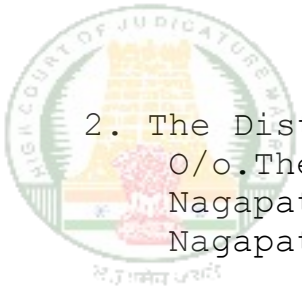
Assistant Registrar(C)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Police, 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 of Prison,
Central Prison,
Tiruchirappalli.

4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.

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

Pjl

JS/RSK/SAR.3/24.05.2017/3P-6C

ORDER MADE IN
H.C.P (MD) No.48 of 2017
16.05.2017