



WEB COPY

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.5 of 2017

B.Sumathi

: Petitioner

Vs.

1. The State of Tamil Nadu,
Rep.by the Secretary to Government,
Home, Prohibition and Excise (XIV) Department,
St. Fort George, Chennai - 600 009.
2. The District Collector and District Magistrate,
O/o The District Collector and District Magistrate,
Thanjavur District, Thanjavur.
3. The Superintendent ,
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 records of the detention order of the second respondent in Detention Order P.D.No.46/2016 dated 22.12.2016 and quash the same and consequently direct the respondents to produce the detenu namely Boopathy, son of Kunjithapatham, aged about 38 years before this Court, who is detained at Central Prison, Tiruchirappalli and set him at liberty.

For Petitioner

: Mr.K.A.S.Prabhu

For Respondents

: Mr.C.Ramesh, APP

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, Boopathy, aged about 38 years. The detenu has been detained by the second respondent by the order of detention, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

<https://hcservices.ecourts.gov.in/hcservices/>
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 many grounds have been raised in the petition, learned counsel appearing for the petitioner pointed out the impugned detention order only on the ground of non supply of copy of the bail application in the similar case, referred to in the grounds of detention for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making effective and purposeful representation to the authorities concerned, thereby vitiating the detention. In support of his contention, he relies on the judgment of the Hon'ble Apex Court reported in **1990-2-SCC-1 in M.Ahamed Kutty Vs. Union of India and another.**

4. The learned Additional Public Prosecutor on behalf of the respondents would submit that the order of detention has been passed in due consideration of fact and law with a view to curtail his prejudicial activities and to maintain public order, and therefore, it does not warrant interference by this Court.

5. It is seen from paragraph No.4 of the grounds of detention that in similar case, the accused was released on bail by the Court concerned. On a perusal of the paper book furnished by the prosecution, it is seen that it does not contain any of the documents, viz., the bail application, in respect of the similar case. The said bail application filed in similar case was the document relied upon by the detaining authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such documents have not been supplied to the detenu, as it did not form part of the paper book furnished by the prosecution. Therefore, non supply of the copy of the bail application and other documents in similar case to the detenu would vitiate the impugned detention order. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail applications moved by the detenu in the ground case or in the adverse cases, necessarily would have to be considered by the Court concerned solely on merits.

6. The Hon'ble Supreme Court in **M.Ahamed Kutty Vs. Union of India and another (1990-2-SCC-1)** has observed thus:

"7. Considering the facts in the instant case, the bail applications and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the



grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India, rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case."

7. This Court in **Jarinabegam Vs. State of Tamil Nadu by Secretary to Government, Prohibition and Excise Department, Chennai and another (2007-1-MLJ-Cr1.-18)** relying upon the decision of the Hon'ble Supreme Court cited supra has held that non supply of the copy of the bail application in similar cases to the detenu has the effect of vitiating the order of detention.

8. As already analysed by us, in the facts and circumstances of the present case, non supply of the documents viz., bail application, in similar case, to the detenu has the effect of vitiating the impugned detention order. Further, due to non supply of such a vital document, the detenu has lost valuable right to make an effective representation to the authorities concerned.

9. In the light of the above said principles laid down by the Hon'ble Supreme Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

10. In the result, the Detention Order, passed by the second respondent, in his proceedings in Detention Order in P.D.No.46/2016 dated 22.12.2016, is quashed. The detenu, namely, Boopathy son of Kunjithapatham, aged about 38 years is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

11. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise (XIV) Department,

<https://hcservices.ecourts.gov.in/hcservices/>
St. Port George, Chennai - 600 009.



2. The District Collector and District Magistrate,
O/o The District Collector and District Magistrate,
Thanjavur District, Thanjavur.

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.

NBI

VB/SV/SAR1/17.07.2017/4P/6C

**ORDER MADE IN
H.C.P (MD) No.5 of 2017
16.05.2017**