

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 10.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH**AND****THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA****H.C.P.(MD)No.786 of 2017**

Indhirani

: Petitioner

Vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat, Chennai-9.
2. The District Magistrate and District Collector,
Pudukkottai District,
Pudukkottai.
3. The Superintendent of Prison
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 record relating to the detention order passed by the 2nd respondent pertaining to the order made in P.D.O.No.20/2017 dated 26.05.2017 in detaining the detenu under 2(b) of the Tamil Nadu Act 14 of 1982 as a Bootlegger and quash the same and direct the respondents to produce the detenu Thangapandian S/o.Chandran, Male, aged about 31 years, who is detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.S.Prabhu

For Respondents : Mr.A.Ramar

Additional Public Prosecutor

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

The petitioner is the mother of the detenu-Thangapandian, S/o.Chandran, aged about 31 years. The detenu has been detained by the second respondent by his order in P.D.O.No.20/2017, dated 26.05.2017, holding him to be a "Bootlegger", as contemplated



under Section 2(b) of Tamil Nadu Act 14 of 1982. Challenging the same, she has come up with the present petition.

2. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner submitted that the Detaining Authority, while arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, in paragraph No.5 of the grounds of detention, has stated that the petitioner has filed a bail petition before the Principal District Sessions Judge, Pudukottai, filed in CrI.M.P.No.582/2017 dated 25.05.2017 and the same is pending and that there is a real possibility of the detenu coming out on bail by filing a bail application. When already, a bail application filed before the learned Judge is pending, without non application of mind, the detaining authority had stated that there is a real possibility of the detenu coming out on bail by filing a bail application. This shows non application of mind on the part of the Detaining Authority and hence, the same would vitiate the order of detention.

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

4. As rightly contended by the learned counsel for the petitioner, when already a bail application is pending in CrI.M.P.No.582/2017 dated 25.05.2017, the Detaining Authority, observed that there is a real possibility of the detenu coming out on bail by filing a bail application. Hence, on the ground of non-application of mind, the subjective satisfaction expressed by the Detaining Authority is vitiated. On that ground alone, the order of detention 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 P.D.O.No.20/2017, dated 26.05.2017 is quashed. The detenu, namely Thangapandian, S/o.Chandran, aged about 31 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(P & A)

/True Copy/

Sub Assistant Registrar

To

<https://hcservice.shera.gov.in/csp/csp/> Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat, Chennai-9.



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

3. The Superintendent of Prison
Central Prison,
Tiruchirappalli.

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

5. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai-600009.

Order made in
H.C.P. (MD) No.786 of 2017
10.10.2017

RR
SDS/KP/SAR 1/25.10.2017/3P/6C