



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P.[MD].No.1235 of 2016

Raji

: Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the second respondent pertaining to the order made in C.O.C.No.60/2016, dated 04.09.2016 in detaining the detenu under Section 2(b) of Tamil Nadu Act 14 of 1982 as a Boot-Legger and quash the same and direct the respondents to produce the detenu Babu, S/o.Chinnadurai, Male, aged 27 years, who is detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

O R D E R

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

The petitioner is the brother of the detenu - Babu, S/o.Chinnadurai, aged about 27 years. The detenu has been detained by the second respondent by his order in C.O.C.No.60/2016, dated



04.09.2016, holding him to be a "Boot-Legger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "Boot-Legger" and that his presence at large would be prejudicial to the maintenance of public order and public health and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the following contention:

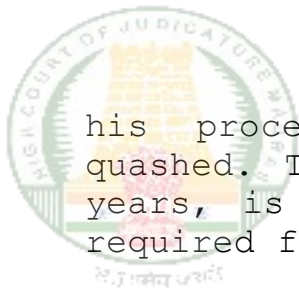
"The Detaining Authority, after noticing the fact that in respect of the ground case in Crime No.197 of 2016, bail application filed by the detenu in Cr.M.P.No.2217 of 2016 was dismissed by the learned Judicial Magistrate No.II, Nagapattinam, on 24.08.2016 and thereafter, he filed a bail petition before the learned Sessions Judge, Nagapattinam, in Cr.M.P.No.2152 of 2016 and the same is pending, proceeded further to state that he was satisfied that there was a real and imminent possibility of the detenu coming out on bail "by filing a bail application for the above case before the Higher Court". The above said observation that there was real possibility of coming out on bail by filing a bail application in the Higher Court, while bail petition filed before the Sessions Judge was pending, shows total non-application of mind. On the ground of non-application, the Order of detention is liable to be set aside."

4. 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.

5. We find some force in the above said submission made by the learned counsel for the petitioner, because, as rightly contended by the learned counsel for the petitioner, the Detaining Authority exhibited non-application of his mind regarding the pendency of the bail application by making an observation that there was real possibility of the detenu coming out on bail by filing bail a application before the Higher Court, while bail application is pending before the learned Sessions Judge. 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.

<https://hcservices.ecourts.gov.in/hcservices/>

6. 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.60/2016, dated 04.09.2016, is quashed. The detenu, namely Babu, S/o.Chinnadurai, aged about 27 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(AE)

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Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
 - 2.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
 - 3.The Superintendent of Prison,
Central Prison,
Tiruchirapalli.
 4. The Joint Secretary to Government,
Public (Law & Order)
Fort.St.George,Chennai - 9.
 - 5.The Inspector Of Police,Nagore Circle,
Nagapattinam District.
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 cc to MR.K.M.Karunagaran, ADVOCATE, SR NO:3513

sml

AAM PM 03.02.2017 3P 8C

Order made in
H.C.P. [MD].No.1235 of 2016
Dated: 23.01.2017