



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.1389 of 2016

Maheswari

: Petitioner

Vs.

1. State of Tamil Nadu,
Rep by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
3. The Superintendent,
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 entire records in detention order for the entire records in detention order passed in C.O.C.No.65 of 2016, dated 15.10.2016, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's Son namely Mahendran S/o. Mariyappan male aged 24 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

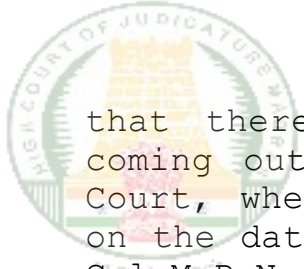
: Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu - Mahendran S/o. Mariyappan, Male, aged 24 years. The detenu has been detained by the second respondent by his order in C.O.C.No.65 of 2016, dated 15.10.2016, holding him to be a "Boot-legger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982.

2. Though a number of grounds have been raised assailing the order of detention, at the time of making arguments, the learned counsel for the petitioner submitted that there is non-application of mind on the part of the Detaining Authority insofar as the Detaining Authority, while expressing the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case, in Paragraph No.5 made, an observation



that there was a real and imminent possibility of the detenu coming out on bail by filing a bail petition before the Higher Court, whereas the earlier part of the observation shows that as on the date of the order of detention, the bail petition filed in CrI.M.P.No.2484 of 2016, on the file of the learned Sessions Judge, Nagapattinam, was pending.

3. We find some force in the above said submission made by the learned counsel for the petitioner. A perusal of Paragraph No.5 of order of detention will show that the learned counsel for the petitioner is right in contending that there was non-application of mind on the part of the Detaining Authority and the subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case is not based on cogent reasons and is only a ipse dixit. On that ground, the order of detention is liable to be set aside.

4. 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.65 of 2016, dated 15.10.2016, is quashed. The detenu, namely, Mahendran S/o. Mariyappan, Male, aged 24 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 Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
3. The Superintendent,
Central Prison, Tiruchirappalli.
4. The Joint Secretary to Government,
Public (L&O) Department,
Fort st.George, Chennai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD) No.1389 of 2016
Dated:16.02.2017