

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

DATED : 02.06.2017

CORAM

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

H.C.P(MD)No.1652 of 2016

Sangeetha

: Petitioner

Vs.

1. State of Tamil Nadu rep. by
The Secretary to Government,
Home, Prohibition and Excise (IX) 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,
Special Prison for women, Tiruchirappalli.

: Respondents

This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Habeas Corpus, calling for the entire records in detention order passed in C.O.C.No.79/2016 dated 04.12.2016 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 mother namely, Manoranjitham, W/o.Durai, aged about 45 years, who is detained in Special Prison for Women, Tiruchirappalli before this Court and set her at liberty.

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

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor**ORDER**(Order of the Court was made by **T.S.SIVAGNANAM, J**)

Heard the learned counsel for the petitioner and the
<https://hcservices.ecourts.gov.in/hcservices/>
learned Additional Public Prosecutor appearing for the
respondents.



2. This petition has been filed by the daughter of the detenu to quash the order of detention dated 04.12.2016. By the impugned detention order, the petitioner's daughter has been branded as 'Bootlegger' and it is stated that the detenu has come to adverse notice in five cases. The contention raised by the petitioner is two fold:

Firstly, on the ground of delay in considering the representation made by the detenu alleging that there is a delay of three days and this delay would vitiate the order of detention.

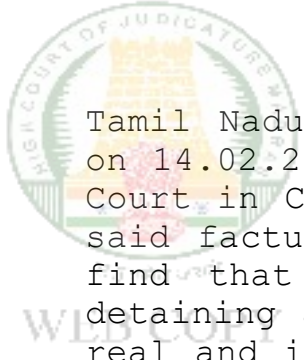
The 2nd contention raised by the petitioner is that the detention order is vitiated on account of non application of mind, as the detaining authority has stated that there is a real and imminent possibility of the detenu coming out on bail by filing a bail application, when the detaining authority has recorded that already a bail application is pending.

3. With regard to the first contention raised by the petitioner relating to the delay in considering the representation, the respondent police would submit that such contention cannot be raised, as the representation, which was given by the detenu, was on 09.12.2016 and on the very same day, this Habeas Corpus Petition was moved and in the light of the decision of the Hon'ble Supreme Court in David Patrick Ward and another v. Union of India and Others [1992 SCC (Cri) 814] [(1992) 4 SCC 154], the detention order cannot be quashed on the alleged ground of delay.

4. We have heard the learned Additional Public Prosecutor on the above submissions.

5. The Hon'ble Supreme Court in the case of David Patrick (supra), while examining the somewhat similar case, it was pointed out that the question of consideration of the representation on a matter, which is prejudiced, would not arise and therefore, the relief was denied to the detenu in the said case. As pointed out by us earlier, the representation was given by the detenu on 09.12.2016 and the very same day, the Habeas Corpus Petition was filed. Therefore, the contention that the detention order is vitiated on account of delay in consideration of the representation cannot be accepted and the said contention raised by the petitioner is rejected.

6. Moving to the second contention raised by the petitioner with regard to the pendency of the bail application, vis-a-vis, non application of mind, we find that in the order of detention and in particular in Paragraph No.6, it has been stated that the delay petition filed before the Sessions Judge, Nagapattinam was <https://hccs.judges.gov.in/ServiceM>. P.No.3012/2016 dated 23.11.2016 and in the first adverse case in Crime No.65/2016 on the file of the Sembanarkoil Police Station under Section 4(1)(aaa) read with 4(1) (A) of the



Tamil Nadu Prohibition Act, the detenu was arrested and remanded on 14.02.2016 and later released on bail by the District Sessions Court in Cr.M.P.No.594/2016 dated 24.02.2016. In the light of the said factual statement as recorded in the order of detention, we find that in the next sentence, the observation made by the detaining authority stating that he has satisfied that there is a real and imminent possibility of the detenu coming out on bail by filing the bail application for the said case would amount to non application of mind. In fact, the very same contention was considered by this Court in Lakshminarayanan v. Secretary to the Government, reported in (2014) 2 MLJ (Cr1) 175 and followed in Senthamilselvi v. State of Tamil Nadu in HCP(MD)No.1256 of 2016 dated 23.03.2017. Hence, we are satisfied that on the contentions raised by the petitioner, the detention order is liable to be set aside.

7. In the result, this Habeas Corpus Petition is allowed and the order of detention in C.O.C.No.79/2016 dated 04.12.2016 is hereby quashed. The detenu, namely, Manoranjitham, wife of Durai, is ordered to be set at liberty forthwith, if she is not required for detention in connection with any other case.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
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Fort st. George, Chennai-9.
2. The District Collector and District Magistrate
O/o. The District Collector and District Magistrate
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Special Prison for women, Tiruchirappalli.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

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