

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.778 of 2018

Murugesan

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department (XVI),
Fort St. George, Chennai-600 009.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the order of detention C.M.P.NO.19/B.L.A./C2/2018 dated, 09/04/2018 passed by the 2nd respondent and to quash the same and also to direct the detenu Prasanth, S/O.Selvam, aged 27 years, who is presently detained in the Central Prison, Salem to be produced before this Hon'ble court and set at liberty.

For Petitioner: Mr.D.Veerasekaran

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

सत्यमेव जयते

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in C.M.P.No.19/B.L.A./C2/2018 dated 09.04.2018, whereby the detenu, by name, Prasanth, son of Selvam, aged about 27 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "BOOTLEGGER".

2. The detenu has come to adverse notice in the following cases:-

S.No	Cr.No. & Police Station	Offences
1.	Cr.No.14/2018 Attur Prohibition Enforcement Wing	4(1)(aa), 4(1-A) Tamil Nadu Prohibition Act
2.	Cr.No.262/2018 Attur Prohibition Enforcement Wing	4(1)(aa), 4(1-A) Tamil Nadu Prohibition Act

The ground case has been registered against the detenu in Cr.No.292 of 2018 on the file of Inspector of Police, Attur Prohibition Enforcement Wing for offences u/s 4(1)(i), 4(1)(aaa) and 4(1-A). The detention order has been passed by second respondent in C.M.P.No.19/B.L.A./C2/2018.

3. Though many grounds have been raised in the petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.292/2018 on 24.03.2018; whereas the detention order was passed on 09.04.2018, i.e. Nearly after a lapse of 16 days. This inordinate delay in passing of detention order would vitiate the same. Further, the Grounds of Detention would reveal that 2 adverse cases have been registered against the detenu and a ground case was registered against him in Cr.No.292 of 2018 for offences u/s 4(1)(i), 4(1)(aaa) and 4(1-A). Admittedly, the detenu has not moved any bail applications in the ground case as also in the adverse cases. Therefore, the likelihood of coming out on bail is very remote ; whereas the statement of the Sponsoring Authority has been taken into consideration by the Detaining Authority that the relatives of the detenu are taking steps to file bail applications in the ground case. When a bail application has not been moved, the logical conclusion would be that there is no likelihood of coming out on bail. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits ; but passed, based on mere ipsi dixit. Hence, we are of the view that the detention order is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P.No.19/B.L.A./C2/2018 dated 09.04.2018, passed by the second respondent is set aside. The

detenu, namely, Prasanth, son of Selvam, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmi

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department (XVI),
Fort St. George, Chennai-600 009.
- 2.The District Magistrate and
District Collector,
Salem District, Salem.
- 3.The Superintendent
Central Prison, Salem.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai-9.
- 5.The Public Prosecutor
High Court, Madras.

+1cc to Mr.D.Veerasekaran, Advocate S.R.No.58294.

सत्यमेव जयते

H.C.P.No.778 of 2018

RGN(CO)

rrs 19/09/2018.

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