



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

H.C.P (MD) No.208 of 2018

WEB COPY

Sandilyan

: Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.

2. The District Collector and
District Magistrate,
O/o. The District Collector and
District Magistrate,
Nagapattinam District,
Nagapattinam.

3. The Superintendent,
Central Prison,
Tiruchirappalli.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in C.O.C.No.06/2018 dated 08.02.2018 on the file of the 2nd respondent and set aside the same as illegal and direct the respondents to produce the petitioner namely, Sandilyan, S/o Pandiyan, male, aged 31 years who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

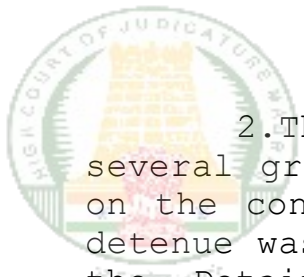
For Petitioner
For Respondents

: Mr.K.A.S.Prabhu
: Mr.V.Neelakandan, APP

O R D E R

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

The petitioner is the detenu - Sandilyan, S/o Pandiyan. The detenu has been detained by the second respondent, by his order in C.O.C.No.06/2018, dated 08.02.2018, holding him to be a "Boot Legger", as contemplated under Section of 2(b) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



2. Though the order of detention has been assailed on several grounds, learned counsel for the petitioner mainly relies on the contention that the order of detention passed against the detenu was confirmed by Government on 19.02.2018. On such event, the Detaining Authority / 2nd respondent has become functus officio. However, such respondent has passed orders on the representation of the petitioner dated 15.02.2018 rejecting the same on 23.02.2018. The 2nd respondent, upon having become functus officio, was duty bound to forward the representation of the petitioner to the Government for due consideration. His failure to do so, has affected the right of the detenu under Article 21 of the Constitution of India. On that ground, the order of detention stands vitiated.

3. We also heard the submissions made by the learned Additional Public Prosecutor on the above said contentions raised on behalf of the petitioner.

4. As rightly contended by the learned counsel for the petitioner, the Detaining Authority, after the detention order was approved by the Government, ought to have transmitted the representation to the Government for the consideration of the Advisory Board and orders by the Government. The very fact that the Detaining Authority chose to pass an order of rejection after the detention order was approved by the Government, will show exercise of power, which is not conferred on the Detaining Authority. On that score alone, the order of detention is liable to be set aside.

5. In the result, the Detention Order, passed by the second respondent, in his proceedings in C.O.C.No.06/2018 dated 08.02.2018 is quashed. The detenu, namely, Sandilyan, S/o Pandiyan, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

6. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(CO)

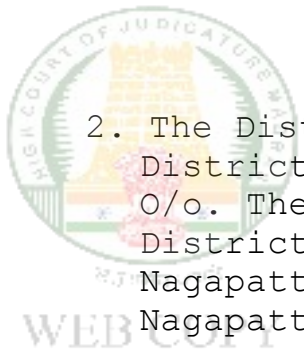
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Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,

<https://hcservice.shreeemg.in/hcservice> 009.



2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
3. The Superintendent,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai -9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

MPK/NBJ

VB/PN/SAR1/12.07.2018/3P/6C

ORDER MADE IN
H.C.P (MD) No.208 of 2018
Dated: 17.04.2018