



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P. (MD) No.293 of 2018

S.Selvakumar

... Petitioner

Vs.

1.State of Tamil Nadu, rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise 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,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: The 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.14/2018 dated 28.02.2018 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 father namely Selvaraj, S/o.Marimuthu, male, aged 58 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

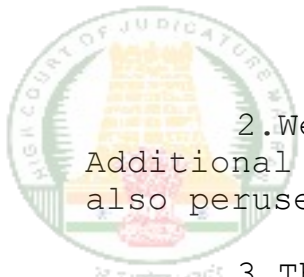
For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor.

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

The petitioner is the son of the detenu viz., Selvaraj S/o. Marimuthu, aged about 58 years. The detenu has been detained by order in C.O.C.No.14/2018, dated 28.02.2018, holding him to be a "Boot Legger", as contemplated under 2(b) of Tamil Nadu Act 14 of 1982. This order is under challenge in this Habeas Corpus Petition.



2. We have heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, 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. A perusal of the Grounds of Detention would reveal that the ground case came to be registered against the detenu in Cr.No.24 of 2018 for the offence u/s. 4(1)(aaa) r/w 4(1-4) Tamil Nadu Prohibition Act, 1937 (Transport). Bail applications have been moved on behalf of the detenu in the ground case before Judicial Magistrate Court, Sessions Court and this Court and the same were dismissed and no further bail application has been moved on behalf of the detenu. Though the detaining authority has made reliance on the second adverse case in which the detenu was granted bail by the Sessions Court, the facts involved in that case are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind. 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 ipse dixit. Hence, on the above ground, the detention order 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.14/2018, dated 28.02.2018, is quashed. The detenu, namely, Selvaraj, son of Marimuthu, 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.

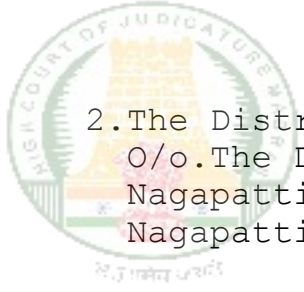
Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

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



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) Department,
Fort St.George, Chennai - 9.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.293 of 2018
25.04.2018

sj

RAM/JC/SAR 4/18.06.2018/3P/6C