



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

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

H.C.P. (MD) No.514 of 2018

Sivakumar

... Petitioner

Vs.

1. State of Tamil Nadu,
represented 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,
Ariyalur District, Ariyalur.
3. The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in Cr.M.P.No.07/2018 dated 15.03.2018 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Sivakumar, S/o.Thangavel, male, aged 39 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.)



second respondent by his order in Cr.M.P.No.07/2018 dated 15.03.2018 holding him to be a "Bootlegger", as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982.

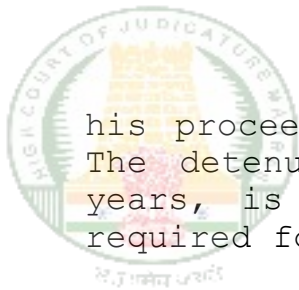
2. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner submitted that the Detaining Authority, while arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, has relied upon the bail granted in a similar in Cr.MP.No.146 of 2015, dated 27.01.2015. Though the Detaining Authority has relied upon the bail granted in the said case, he has not furnished a copy of the bail application in CrI.MP.No.146 of 2015 filed in the said case and hence, the opportunity of making effective representation against his detention is denied to the detenu. Therefore, non-furnishing of the document relied on would vitiate the order of detention.

3. In this regard, the learned counsel for the petitioner has also relied upon number of judgments delivered by the Division Benches of this Court, one such case relied upon by the petitioner is **H.C.P.No.2433 of 2015** in the case of **Shanmugavel vs. State of Tamil Nadu**, wherein, this Court, by relying upon the dictum laid down by the Hon'ble Supreme Court in **M.Ahamed Kutty vs. Union of India and another [1990 (2) SCC 1]**, has quashed the detention order. The relevant portion from the said judgment reads as follows:

"7. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case." (Emphasis added)."

4. The said Judgment is squarely applicable to the case on hand also. Therefore, following the dictum laid down by the Hon'ble Supreme Court, we hold that the impugned detention order is vitiated and the same is liable to be set aside.

5. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in



his proceedings in Cr.M.P.No.07/2018 dated 15.03.2018, is quashed. The detenu, namely Sivakumar, S/o.Thangavel, male, aged about 39 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. 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,
Ariyalur District, Ariyalur.
3. The Superintendent,
Central Prison, Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort.St.George, Chennai - 9.
5. The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

RJ2

TE/SV/SAR-4 : 10/07/2018 : 3P/6C

H.C.P. (MD) No.514 of 2018
21.06.2018