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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated:20.02.2018

Coram :-

THE HON'BLE DR.JUSTICE S.VIMALA
and
THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI
Habeas Corpus Petition No.1762 of 2017

Sathya

... 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: Writ petition under Article 226 of the Constitution of India is filed praying for issuance of a writ of Habeas Corpus, calling for the entire records in detention order passed in C.O.C.No.80 of 2017 dated 24.11.2017 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 husband, namely, Pathinettampadiyan, S/o.Azhaguthevar, male, aged 37 years, who is detained in Central prison, Trichy before this Honourable Court and set him at liberty.

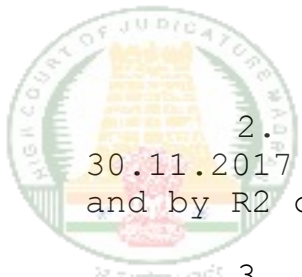
For petitioner : Mr.K.A.S.Prabhu
For respondents : Mr.C.Ramesh

Addl. Public Prosecutor

O R D E R

(Order of the Court was made by S.Vimala,J.,)

The petitioner is the wife of the detenu, namely, Pathinettampadiyan, S/o.Azhaguthevar, male, aged 37 years. The detenu has been branded as a "Bootlegger" as contemplated under Tamil Nadu Act 14 of 1982 and detained under order of the 2nd respondent passed in C.O.C.No.80 of 2017 dated 24.11.2017. The said order is under challenge in this petition.



2. The petitioner has submitted a representation dated 30.11.2017 to R1 and R2 and it has been rejected by R1 on 12.01.2018 and by R2 on 15.12.2017.

3. Even though the learned counsel for the petitioner has raised several grounds to assail the order of detention, he has mainly focused his argument on the ground that when the detention order dated 24.11.2017 was approved by the Government on 05.12.2017, the representation submitted by the detenu before the Detaining Authority was rejected on 15.12.2017 by the very same Detaining Authority, which is not permissible. In support of his submission, the learned counsel for the petitioner has relied on the judgment of a Hon'ble Division Bench of this Court in the case of Muruggavalli vs. State, reported in (2012) 2 MLJ (Cr1.) 448, in which, it has been held as under:

"4. Here, in this case, the State Government approved the Detention Order as early as on 30.12.2011. Hence, the rejection order passed by the Detaining Authority on 13.1.2012 is not valid."

4. The learned counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court in the case of Sri Anand Hanumathsa Katare vs. Additional District Magistrate, reported in (2007) 1 SCC (Cr) 102, wherein it was observed as under:

"10.... the detaining authority becomes functus officio the moment the approval is accorded by the State Government."

Therefore, it is prayed that the impugned order of detention is liable to be quashed.

5. So far as this case is concerned, R1 has approved his detention order on 15.12.2017. Thereafter, the detaining authority becomes functus officio. The detaining authority has no authority to pass any orders, once the detention order is approved by the Government. Hence, the order of rejection is invalid.

6. The learned Additional Public Prosecutor would contend that the petitioner has got four adverse cases pending against him and there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order and public health. However, he has fairly conceded that after approval of the detention order, the rejection of representation of the petitioner by the second respondent is not proper.

7. It is settled that the detaining authority, after passing the detention order, can only forward the representation, if any received, to the Government and he has no power to pass orders on the representation of the detenu. But, in the present case on hand, it is apparent that the Detaining Authority has dealt with the representation of the detenu dated 30.11.2017, subsequent to the approval dated 05.12.2017 of the detention order dated 24.11.2017



and the Detaining Authority has no jurisdiction to do so, as he becomes functus officio the moment the approval is accorded by the State Government. Thus, for the reasons stated herein-above, the impugned detention order is not sustained and is liable to be set aside.

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8. The implication of the Detaining Authority passing orders without forwarding it to the Government would have serious repercussion on the liberty of the detenu. It is expected of the detaining authority to forward all the subsequent materials having a bearing on the matter to the Government so that the Government could exercise the power either to confirm the approval or to modify the approval based on the representation made. When the Government is deprived of the opportunity to consider the materials before passing orders of approval (on 05.12.2017), the order of detention becomes illegal.

9. Even though the Government has chosen to reject the representation dated 30.11.2017, which has been communicated to the detenu on 15.01.2018, the fact remains that even before passing the order of approval dated 05.12.2017, there had been opportunity for the Government to have considered the representation dated 30.11.2017 and when it is not considered before the order of approval, the detention order itself has become invalid.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 24.11.2017 passed in C.O.C.No.80 of 2017, by the second respondent, detaining the detenu, namely, Pathinettampadiyan S/o.Azhaguthevar, who is detained in the Central Prison, Trichy, is hereby quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar(CS-I)

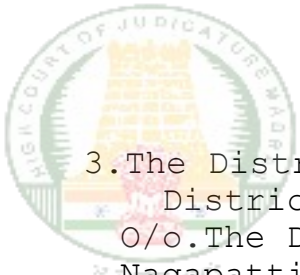
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Sub Assistant Registrar

To:

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

2.The Joint Secretary to Government,
Public (Law & Order),
<https://hcservices.ecourts.gov.in/hcservices/>
Fort St., George, Chennai-9.



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

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4.The Superintendent,
Central Prison,
Tiruchirappalli.
(in duplicate for communication to the detenu)

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

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20.02.2018

RR
JM/SV MMS/SAR 3/20.02.2018/4P/7C