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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.1116 of 2018

Sekar @ Loadman Sekar

... Petitioner

-vs-

1.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,
Kanyakumari District, Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order passed in P.D. No.37 of 2018 dated 20.07.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Sekar @ Loadman Sekar, aged about 41 years, S/o.Rasaiya, now detained at Central Prison, Palayamkottai before this Honourable Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]



second respondent by his order in P.D. No.37 of 2018 dated 20.07.2018, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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

3. The petitioner has submitted a representation dated 28.07.2018 to Respondents 1 and 2 and it has been rejected by second respondent on 06.08.2018.

4. 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 20.07.2017 was approved by the Government on 31.07.2018, the representation submitted by the detenu before the Detaining Authority was rejected on 06.08.2018 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 (Crl.) 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."

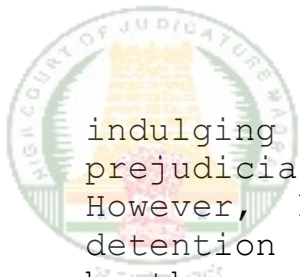
5. The learned counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court in the case of **Sri Anand Hanumathsa Katare vs. Additional District Magistrate, reported in (2007) 1 SCC (Cr) 102**, wherein it was observed as under:

"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.

6. So far as this case is concerned, the first respondent has approved his detention order on 31.07.2018. Thereafter, the detaining authority becomes functuous 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.

7. The learned Additional Public Prosecutor would contend that the petitioner is a notorious ganja seller 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.

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8. 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 28.07.2018, subsequent to the approval of the detention order dated 20.07.2018 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.

9. 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 31.07.2018), the order of detention becomes illegal.

10. Even though the Government has chosen to reject the representation dated 28.07.2018, the fact remains that even before passing the order of approval, there had been opportunity for the Government to have considered the representation dated 28.07.2018 and when it is not considered before the order of approval, the detention order itself has become invalid.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D. No.37 of 2018, dated 20.07.2018, passed by the second respondent is set aside. The detenu, namely, Sekar @ Loadman Sekar, S/o. Rasaiya, male, aged 41 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (Writs)

/True Copy/



To:

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
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.

SJ

TE/PM/SAR-1 : 30/10/2018 : 4P/6C

H.C.P. (MD) No.1116 of 2018
08.10.2018