



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1156 of 2018

WEB COPY

Thenmozhi

... Petitioner

-vs-

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in P.D.No.35/2018 dated 29.07.2018 in detaining the detenu under Section 2(b) of the Tamilnadu Act 14 of 1982 as a Boot-Legger and quash the same and direct the respondents to produce the Detenu namely Appakutti @ Chandrasekaran S/o. Ilango, Male, aged about 43 years, who is detained in Central Prison, Tiruchirappalli, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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.]

The petitioner is the wife of Appakutti @ Chandrasekaran, S/o. Ilango, male, aged 43 years, who is the detenu. The detenu has been detained by the second respondent by his order in P.D.No.35/2018 dated 29.07.2018, holding him to be a "BOOT LEGGER", as contemplated under Section 2(b) 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. 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.490 of 2018 for the offence u/s. 4(1)(aaa), 4(1)(i) and 4(1-A) of Tamil Nau Prohibition Act, 1937. Though bail application was moved on behalf of the detenu in the ground case and the same was pending, the detaining authority has made reliance on similar case in which an accused was granted bail and observed that there is a real possibility of the detenu coming out on bail by filing bail application before appropriate Court. This shows the non-application of mind on the part of the detaining authority. Further, 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 Habeas Corpus Petition is allowed and the order of detention in P.D.No.35/2018, dated 29.07.2018, passed by the second respondent is set aside. The detenu, namely, Appakutti @ Chandrasekaran, S/o. Ilango, male, aged 43 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

1. The Principal Secretary to the Government,
Home, Police, Prison Services and Excise Department,
Secretariat, Chennai - 600 009.



2. The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.

3. The Superintendent of Prison,
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.

SJ

VB/SV/SAR4/08.11.2018/3P/6C

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