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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

H.C.P(MD)No.1255 of 2018

J.Oppayee

.. 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,
Office of the District Collector and District Magistrate,
Ariyalur District, Ariyalur.

3.The Superintendent,
Central Prison,
Tiruchirapalli.

.. Respondents

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 Cr.M.P.No.21/2018 dated 22/08/2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the Petitioners husband namely Jayakumar, S/o.Kaliyamoorthy alias Kaliyaperumal male aged 40 years, who is detained in central Prison, Tiruchirappalli before this Court and set him at liberty and thus render justice.

For Petitioner
For Respondents

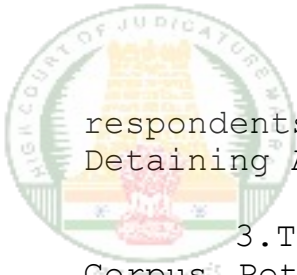
: Mr.K.A.S.Prabhu
: Mr.K.Dinesh Babu
Additional Public Prosecutor.

O R D E R

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

The petitioner is the wife of the detenu. The detenu has been detained by the second respondent by his order in Cr.M.P.No.21/2018 dated 22.08.2018, holding him to be a "Bootlegger", as contemplated under Section 2(b) of the 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, the learned counsel appearing for the petitioner assailed the impugned detention order mainly on the ground of non supply of copy of the bail application filed in similar case, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

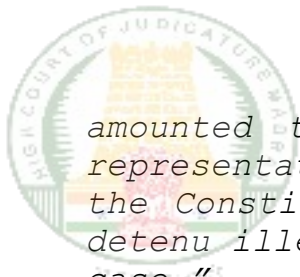
4. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

5. We have given our careful and anxious consideration to the rival submissions put forth by the learned counsel on either side and thoroughly scanned the impugned detention order and the entire materials available on record.

6. It is seen from paragraph - 5 of the grounds of detention that in a similar case registered in Tiruchirapalli city PEW Cr.No.36/2015, bail was granted to the accused Raja alias Peelingan Raja and Chinnappan by the Principal Sessions Judge, Tiruchirapalli in Cr.M.P.No.146/2015 on 27.01.2015. On a perusal of the booklet furnished by the prosecution, it is seen that it does not contain the particulars of given similar case. The bail application filed in similar case was a document relied upon by the detaining authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such a document has not been supplied to the detenu as it did not form part of the booklet furnished by the prosecution. Therefore, non supply of the copy of the bail application in similar case to the detenu would vitiate the impugned detention order.

7. The Hon'ble Supreme Court in M.Ahamed Kutty v. Union of India and another (1990) 2 SCC 1 : LNIND 1990 SC 51 : (1990) 1 MLJ (Cr1) 270, has observed thus:

"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.”.

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8.This Court is Jarinabegam V. State of Tamil Nadu by Secretary to Government, Prohibition and Exercise Department, Chennai and another LNIND 2006 BMM 125 : (2007) 1 MLJ (Cr1) 18 relying upon the decision of the Honourable Supreme Court cited supra has held that non supply of a copy of the bail application to the detenu has the effect of vitiating the order of detention.

9.As already held by us, in the facts and circumstances of the present case, non-supply of the copy of the bail application filed in similar case to the detenu has the effect of vitiating the impugned detention order. Further, due to non supply of such a vital document, the detenu has lost valuable right to make an effective representation to the authorities concerned. In such view of the matter, the impugned order of detention is vitiated and the same is liable to be quashed.

10.In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.21/2018 dated 22.08.2018, passed by the second respondent is set aside. The detenu, namely, Jayakumar, S/o.Kaliyamoorthy alias Kaliyaperumal, male, aged 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/

Assistant Registrar(Cr1.Side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ariyalur District, Ariyalur.

3.The Superintendent,
<https://hcservices.ecourts.gov.in/hcservices/>
Central Prison, Tiruchirapalli.



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

5.The Joint Secretary to Government,
Public law and order,
Fort. St George, Chennai-9.

Mj

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