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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No. 2004 of 2019

Shanker ... Petitioner/Brother of the Detenu

-vs-

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the second respondent dated 25.08.2019 in C.M.P.No.39/B.L.A./C2/2019 against the petitioner's brother Viji, male, aged 35 years, S/o.Kandasamy, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.R.Prathap Kumar
: Addl. Public Prosecutor

ORDER

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

The petitioner is the brother of the detenu, Viji, S/o.Kandasamy, male, aged 35 years. The detenu has been detained by the second respondent by his order in C.M.P.No.39/B.L.A./C2/2019 dated 25.08.2019, holding to be a "Bootlegger", 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 appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

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3. The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offence in the ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4. For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 4 of the grounds of detention are extracted below:

"4. I am aware that Thiru. Viji who is in remand in Attur Prohibition Enforcement Wing Crime No.942/2019 for offences under Section 4(1)(i), 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act and he has moved a bail application before the Principal Sessions Judge, Salem in CMP No.2527/2019 for the above case and the same was dismissed on 10.08.2019. In a similar case in Attur P.E.W. Crime No.491/2016 u/s 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act was filed for Thiru.Sankar, the bail was granted by the Madras High Court in Crl.O.P.No.26245/2016, dated 07.12.2016. Hence, there is a real possibility of his coming out on bail by filing a bail application for the above case before the Higher Court. If he comes out on bail, he will indulge in such further activities which will be prejudicial to the maintenance of public order."

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration in a similar case registered at Attur P.E.W. Crime No.491/2016 u/s 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act was filed for Thiru.Sankar, the bail was granted by the Madras High Court in Crl.O.P.No.26245/2016, dated 07.12.2016 and therefore, there is a real possibility of the detenu coming out on bail in the ground case in Crime No.942/2019 and indulge in such activities prejudicial to the maintenance of public order. The similar case relied on by the authority was registered for the offence u/s 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act bail whereas the ground case has been registered for the offences u/s 4(1)(i), 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention



is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in in C.M.P.No.39/B.L.A./C2/2019 dated 25.08.2019 passed by the second respondent is set aside. The detenu, namely, Viji, S/o.Kandasamy, male, aged 35 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Salem District,
Salem.
- 3.The Superintendent,
Central Prison, Salem.
- 4.The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai 9.

H.C.P. No. 2004 of 2019

VG II(CO)
GN(14/02/2020)