

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2422 of 2019

S.Bhuvaneswari
W/o.Sampath Kumar @ Sampath ... Petitioner

Vs

1. Government of Tamil Nadu,
Rep.by its Secretary, Home,
Prohibition and Excise (XVI) Department
Fort St.George, Chennai 600 009.
2. The District Collector and
District Magistrate,
Erode District, Erode. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records in Cr.M.P.No.18/Bootlegger/2019/C1 dated 01.08.2019 on the file of the second respondent herein and set aside the same and direct the respondents herein to produce the body of the petitioner's cousin brother Venkatachalam S/o.Periyasamy, aged 29 years before this Court now confined in Central Prison, Coimbatore and set him at liberty.

For Petitioner : M/s.R.Subhadra Devi
For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

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[Order of this Court was made by R.SUBBIAH, J]

Petitioner is the cousin sister of the detenu viz.,
Venkatachalam, S/o.Periyasamy, aged 29 years, who has been

branded as a 'Bootlegger' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in Cr.M.P.No.18/Bootlegger/2019/C1 dated 01.08.2019.

2. The alleged ground case has been registered against the detenu in Crime No.609 of 2019 on the file of Erode Town Prohibition Enforcement Wing for offences u/s.4(1)(aaa), 4(1-A), 4(1)(b), 4(1)(g), 4(1)(h) of Tamil Nadu Prohibition Act, Sections 5, 6 and 7 of Tamil Nadu Rectified Spirit Rules and Sections 420, 467, 468 and 471 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. Perused the materials on record.

4. Learned counsel for petitioner submits that despite the admitted position that the bail application moved by the detenu in the ground case has been dismissed, the detaining authority has informed a real possibility of his coming out on bail by filing another bail application since in a similar case bail was granted by learned Principal District and Sessions Judge, Erode, in Cr.M.P.No.225 of 2016 in respect of Crime No.861 of 2015 on the file of Gobichettipalayam Prohibition Enforcement Wing, for offences u/s.4(1)(aaa) and 4(1-A), 4(1)(b), 4(1)(g), 4(1)(h) of Tamil Nadu Prohibition Act, Sections 5, 6 and 7 of Tamil Nadu Rectified Spirit Rules 2000 and Sections 420, 467, 468, 471 and 212 of IPC. Learned counsel submits that in the case cited as similar, the offences are different from that of the offences in the ground case. The non-consideration of such aspect reflects non-application of mind.

5. We have heard learned Additional Public Prosecutor on the above submissions.

6. As rightly submitted by learned counsel for petitioner, the offences alleged in the similar case, relied on by the detaining authority in arriving at a subjective satisfaction, are different from that of the offences alleged in the ground case. Hence, we find that the order of detention suffers from non application of mind.

7. Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Venkatachalam S/o.Periyasamy, in Cr.M.P.No.18/Bootlegger/2019/C1 dated 01.08.2019, is 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(CO)

//True Copy//

Sub Assistant Registrar

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To

1. Government of Tamil Nadu,
Rep.by its Secretary, Home,
Prohibition and Excise (XVI) Department
Fort St.George, Chennai 600 009.
2. The District Collector and
District Magistrate,
Erode District, Erode
- 3.The Superintendent of Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public(Law & Order),Fort St.George,Chennai-9.

H.C.P.No.2422 of 2019

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