

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2424/2018

Saritha

.. Petitioner

vs.

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

2.The District Collector & District Magistrate
Vellore District, Vellore.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 09.10.2018 in C3/D.O. No.77/2018 against the petitioner husband Mohan, Male aged 35 years, son of Settu, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner ... Mr.S.Senthil Vel

For Respondents... Mr.C.Iyyappa Raj, APP

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The wife of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 09.10.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a 'Bootlegger' under the provisions of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the petitioner has come forward to file the present petition.

2 As per the Grounds of Detention dated 09.10.2018

passed by the 2nd respondent herein, the detenu came to the adverse notice in the following cases:-

i) Adverse case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Veppankuppam PS Cr.No.30/2018	4[1]aaa, 4[1-A]ii TNP Act, 1937
2	Veppankuppam PS Cr.No.150/2018	4[1]aa, 4[1-A]ii TNP Act, 1937

3 It is alleged that on 12.08.2018 at about 08.00 a.m., the Inspector of Police, Veppankuppam Police Station and his police party, monitored the surveillance in connection with prohibition offences and noticed persons selling poisonous odour country arrack by keeping 155 litres of country arrack in three lorry tubes, each capable of holding 40 litres ; one lorry tube containing 30 litres and a white colour plastic can containing 5 litres and his identity later on came to be known as Mohan [detenu] and he made an attempt to escape and he was caught and he was arrested on the same day at 9.30 a.m. The detenu voluntarily came forward to give confession statement and the same was recorded in the presence of witnesses and later on, incriminating articles were seized under the cover of Mahazar and the detenu/accused was brought to the police station and a case in crime No.186/2018 for the commission of the offences u/s.4[1][i], 4[1][aaa], 4[1-A][iii] TNP Act, 1937 read with section 328 IPC [ground case]. The detenu was produced before the learned Judicial Magistrate No.3, Vellore on 12.08.2018 and he was remanded to judicial custody till 24.08.2018 and is lodged in the Central Prison, Vellore and his remand has been periodically extended on 07.09.2018, 20.09.2018, 04.10.2018 and thereafter, upto 17.10.2018. The seized articles were sent to the jurisdictional Court under the cover of Form 95. The Detaining Authority on a perusal and consideration of the materials has arrived at the subjective satisfaction that the detenu is a

Bootlegger and his act of selling arrack mixed with poisonous substance, constitute the act, which is prejudicial to the maintenance of public health and public order and therefore, clamped the impugned order of detention, branded him as ''Bootlegger'' under the Tamil Nadu Act 14 of 1982 vide impugned order and challenging the legality of the same, the present habeas corpus petition is filed.

4 The learned counsel for the petitioner would submit by drawing the attention of this Court to the contents of the Booklet supplied to the detenu along with the Grounds, that

there are ample materials to show that the detenu has also been arrested in connection with two adverse cases and ground case and is in custody with regard to those cases; whereas in paragraph No.5 of the Grounds of Detention, the act of filing bail application and dismissal of the same is referable only to ground case and his arrest and detention and non taking of any steps to come out on bail in two adverse cases, have not at all been taken into consideration and therefore, the subjective satisfaction arrived at by the 2nd respondent/Detaining Authority to clamp the order of detention, is wholly vitiated and hence, prays for quashment of the same.

5 Per contra, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the Detaining Authority, after due and proper application of mind has rightly clamped the order of detention and prays for dismissal of this petition.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 As rightly pointed out by the learned counsel for the petitioner, the detenu is in custody in connection with two adverse cases also and however, the said fact has been completely overlooked by the Detaining Authority and a perusal of paragraph No.5 of the Grounds of Detention would also disclose that the detention of the detenu in connection with two adverse cases and non taking of steps to file bail applications, have not all been taken into consideration by the Detaining Authority and the subjective satisfaction arrived at by the 2nd respondent / Detaining Authority is vitiated and hence, on this sole ground, the detention order, impugned herein, is liable to be set aside.

8 In the result, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 09.10.2018 made in C3/D.O.No.77/2018 is hereby set aside. The detenu, viz., Mohan, son of Settu, aged 35 years, who is now confined in the Central Prison, Vellore is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

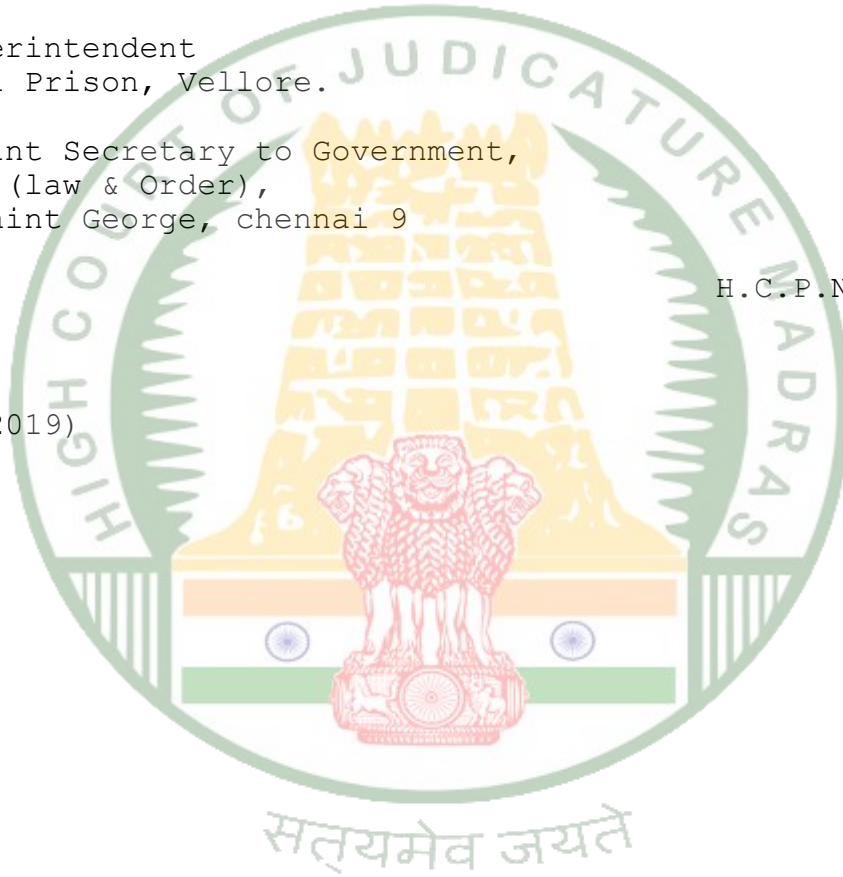
AP

To

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

H.C.P.No.2424/2018

MP (CO)
GN(01/04/2019)



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