

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2514 of 2018

Sujatha ... Petitioner

-vs-

1.State of Tamil Nadu,
Represented by its Principal Secretary,
Home, Prohibition & Excise Department,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in connection with detention order dated 10.10.2018 made in No.BCDFGISSSV No.936 of 2018 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the detenu Dhanasekaran, Son of Singaram, aged about 53 years, who is now confined in Central Prison, Puzhal.

For Petitioner : M/s.N.Sarayanan

For Respondents: Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

[Order of the Court by M.Sathyanarayanan, J.]

Wife of the detenu is the petitioner herein. Husband of the petitioner viz., Dhanasekaran, S/o.Singaram aged about 53 years, being branded as "Bootlegger", was detained, vide impugned order in No.BCDFGISSSV No.936 of 2018 dated 10.10.2018 passed by the second respondent under Section 2(b) of the Tamil Nadu

Prevention of Dangerous activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). Challenging the legality of the said detention, the present Habeas Corpus Petition is filed.

2. A perusal of the detention order would disclose that the detenu is facing four adverse cases as under:

- (i) Crime No.309 of 2017 on the file of the PEW, Villupuram Unit for the commission of offence under Section 4(1)(aaa) of the Tamil Nadu Prohibition Act in connection with the occurrence which took place at about 14.00 hours on 06.05.2017.
- (ii) Crime No.139 of 2017 on the file of the PEW, T.Nagar Unit for the commission of offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act in connection with the occurrence which took place at about 11.30 hours on 20.05.2017.
- (iii) Crime No.147 of 2017 on the file of the PEW, T.Nagar Unit for the commission of offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act in connection with the occurrence which took place at about 12.30 hours on 28.05.2017.
- (iv) Crime No.392 of 2018 on the file of the PEW, Chengalpattu Unit for the commission of offence under Section 4(1)(aaa) of the Tamil Nadu Prohibition Act in connection with the occurrence which took place at about 07.00 hours on 01.08.2018.

3. It is averred in the grounds of detention that the Inspector of Police, PEW, T.Nagar Unit, Chennai Police, at about 8.30 hours on 26.09.2018 was mounting a surveillance regarding prohibition offences in his jurisdiction in front of Ashok Pillar Post Office and signaled to stop a TVS XL motorcycle bearing Reg.No.TN-10-AP-3143, which was found carrying 3 carton boxes. The said vehicle was being driven in a suspicious manner and however, the rider proceeded without stopping the vehicle and it was chased and intercepted. On examination of 3 carton boxes, the Inspector of Police found 139 bottles each containing 180 ml. Premier Doctor's Brandy, which were bought at Pondicherry. The rider of the vehicle/detenu was detained and on examination, he confessed that he had mixed Atropine, a poisonous substance, to increase intoxication. The vehicle along with liquor bottles were seized and the detenu was arrested and a case in Crime No.395 of 2018 (Ground Case) was

registered for the offences under Sections 4(1)(a), 4(1-A) of the Tamil Nadu Prohibition Act, 1937. An intimation was also given to the son of the detenu as to the detention and the detenu was produced before the XVII Metropolitan Magistrate Court, Saidapet, Chennai and in pursuant to the order of remand, he was lodged in Central Prison, Puzhal, Chennai on 10.10.2018. The second respondent/Detaining Authority, on deriving the subjective satisfaction based on the materials available, has clamped the order of detention and challenging the same, the present Habeas Corpus Petition is filed by the wife of the detenu.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to the list of adverse cases and would submit that in respect of the 4th adverse case in Crime No.392 of 2018 on the file of the PEW, Chengalpattu Unit for the commission of offence under Section 4(1)(aaa) of the Tamil Nadu Prohibition Act, necessary details as to the arrest of the detenu in connection with the said case and as to whether he is still in custody or enlarged on bail has not been shown and in paragraph No.4 of the grounds of detention, the said fact has not been reflected and however, the second respondent/Detaining Authority has derived the subjective satisfaction that in similar cases bail was granted by Courts and there is likelihood of the detenu coming out on bail in the ground case and the same would be prejudicial to the maintenance of public health and public order and as such, the subjective satisfaction arrived by the second respondent/Detaining Authority is vitiated on account of the said infirmity and prays for setting aside the impugned order of detention.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondents would submit that the second respondent/Detaining Authority has taken into consideration all the relevant materials to arrive at the subjective satisfaction and rightly clamped the order of detention.

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

7. A perusal of the grounds of detention would disclose that in respect of the 4th adverse case in Crime No.392 of 2018 registered on the file of the PEW, Chengalpattu Unit for the commission of offence under Section 4(1)(aaa) of the Tamil Prohibition Act in connection with the occurrence which took place on 01.08.2018 at 7.00 hours, nothing has been indicated as to whether the detenu is still in custody or enlarged on bail and in paragraph No.4 of the grounds of detention, the second respondent/Detaining Authority has taken into consideration the

adverse cases and clamped the order of detention, but failed to advert to the 4th adverse case. In the considered opinion of the Court, the above said infirmity would vitiate the impugned order of detention for the reason that the second respondent/Detaining Authority has failed to advert to the relevant fact as to the custody or enlargement of bail by the detenu in respect of the 4th adverse case.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in No.BCFIGSSSV No.936 of 2018 dated 10.10.2018 is set aside. The detenu viz., Thiru Dhanasekaran, S/o.Singaram, aged about 53 years, confined at Central Prizon, Puzhal, Chennai is directed to be released forthwith unless his custody/detention is required in connection with any other case.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai-600 009.
- 2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai.
- 3.The Superintendent of Prisons
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

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