

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE M. NIRMAL KUMAR

H.C.P.Nos.2758 & 2761 of 2018

Tmt.Chinnammal ...Petitioner in H.C.P.No.2758/2018

R.Chandrasekaran ...Petitioner in H.C.P.No.2761/2018

Vs.

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

2.The District Collector and
District magistrate, Vellore District,
Vellore-9.

...Respondents in both petitions

Common Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus to call for the entire records in connection with the order of detention passed by the second respondent dated 10.11.2018 in C3/DO No.90/2018 & C3/DO No.90/2018 against the petitioners' son Kaliyappan son of Chinnadurai, aged about 38 years and Thirupathi, son of Chandrasekaran, aged about 24 years who are confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenues before this Court and set them at liberty.

For Petitioner in both petitions : Mr.Parthiban.V

For Respondents in both petitions : Mr.C.Iyyappa Raj
Additional Public Prosecutor

COMMON ORDER

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

In H.C.P.No.2758 of 2018, the mother of the detenu is the petitioner and in H.C.P.No.2761 of 2018, the father of the detenu is the petitioner. Both detenues said to have involved in the commission of offence in the ground case and since the contents of the impugned order dated 10.11.2018 passed by the 2nd respondent contains similar allegations, both the Habeas Corpus petitions are taken up and disposed of by this common order.

2. The petitioners' challenging the legality of the impugned Orders of Detention dated 10.11.2018 passed by the 2nd respondent by invoking Section 2(b) of the Tamil Nadu Act 14 of 1982, in branding the detenues as "**Bootleggers**", came forward to file these Habeas Corpus petition.

3. A perusal of the grounds of detention dated 10.11.2018 would disclose among other things that it is a case of solitary incident.

According to the Sponsoring Authority, the Inspector of Police, Tirupathur Prohibition Enforcement Wing has received a secret information, and mounted surveillance on Tirupathur-Pudhupettai road in connection with prohibition offences and they noticed two persons whose names and address were later ascertained as Thiru.Buvanesh / detenu and Thiru.Kothandaraman were found transporting spurious liquor in a Grey Colour Honda Activa and the vehicle was stopped and the two persons were examined and the police also searched the vehicle and found a curtain box containing 20 bottles of forged SNJ No.1 Strong Brandy with capped as No.1, McDowells, each containing 180 ml. One of the accused person viz., Bhuvanesh/detenu in H.C.P.No.2785 of 2018 voluntarily came forward to give confession statement and he admitted that he and his associates viz.,Kothandaraman, Manikandan, Kaliyappan, and Thirupathi/detenu in H.C.P.No.2761 of 2018 had manufactured spurious liquors by using rectified spirit at the house of Kaliyappan. The accused viz., Bhuvanesh and Kaliyappan were also examined and Kaliyappan also came forward to give his confession statement and recorded in the presence of the witnesses. Based on the confession statement, the police officials conducted ride and on seeing the police

party, two persons attempted to flee away, which include the detenu in H.C.P.No.2761/2018. They were arrested at about 07.00 p.m on 08.10.2018 and they voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement, some incriminating articles were seized. Subsequently, the Inspector of Police, Tirupathur Prohibition Enforcement Wing has registered a case in Cr.No.482/2018 under Section 4(1) aaa, 4(1-A)ii TNP Act 1937 r/w 468, 471, 420, 328 IPC. The detenues and their associates were produced before the Court of Judicial Magistrate No.I, Tirupathur on 09.10.2018 and were ordered to be remanded to judicial custody till 23.10.2018 and their remand period was extended periodically.

4. The Detaining Authority, on the basis of materials, formed a subjective satisfaction that the detenues, who have committed the crime, has already come to adverse notice in solitary cases and their acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned orders of detention and challenging the legality of the same, the present Habeas Corpus Petitions are filed.

5. The learned counsel appearing on behalf of the detenues has drawn the attention of this Court to the worksheet and would submit that for revoking the orders of detention, passed against the detenues, the post detention representations dated 13.11.2018 were submitted and the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the same on 04.12.2018 and the Hon'ble Minister for Electricity, Prohibition and Excise has dealt with the same on 20.12.2018 and there was a delay of 14 days in considering the said representation and even by excluding the public holidays of 4 days, still there was a delay of 10 days in dealing with the said representations. In the absence of proper explanation, the said delay is fatal to the impugned orders of detention and therefore, prays for quashment of the same.

6. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State by drawing attention of this Court to the worksheets would submit that the delay cannot be construed as fatal and the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the orders of detention and hence prays for dismissal of these petitions.

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

8. As rightly pointed out by the learned counsel appearing for the petitioner, the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the representation on 04.12.2018 and the Hon'ble Minister for Electricity, Prohibition and Excise has dealt with the same on 20.12.2018 and there was a delay of 14 days in considering the said representation, even by excluding the public holidays of 4 days, still there was a delay of 10 days in dealing with the said representation and no plausible or tenable explanation has been offered on behalf of the respondents as to the said delay. In the considered opinion of this Court, the delay in dealing with the representations violates the valuable right guaranteed to the detainees under Article 22 of the Constitution of India and hence on the sole ground, the impugned orders of detention warrant interference.

9. Accordingly, these Habeas Corpus Petitions stand allowed and the Detention Orders passed by the second respondent in proceedings C3/DO No.90/2018 & C3/DO No.91/2018 dated 10.11.2018 are set aside and the detenues namely Kaliyappan son of Chinnadurai, aged about 38 years and Thirupathi, son of Chandrasekaran, aged about 24 years, who are confined at Central Prison, Vellore are set at liberty forthwith, unless their detention / custody is required in connection with any other case / proceedings.

[M.S.N, J.] [M.N.K., J.]

01.04.2019

Internet: Yes/no
Index : Yes/No
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To:

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

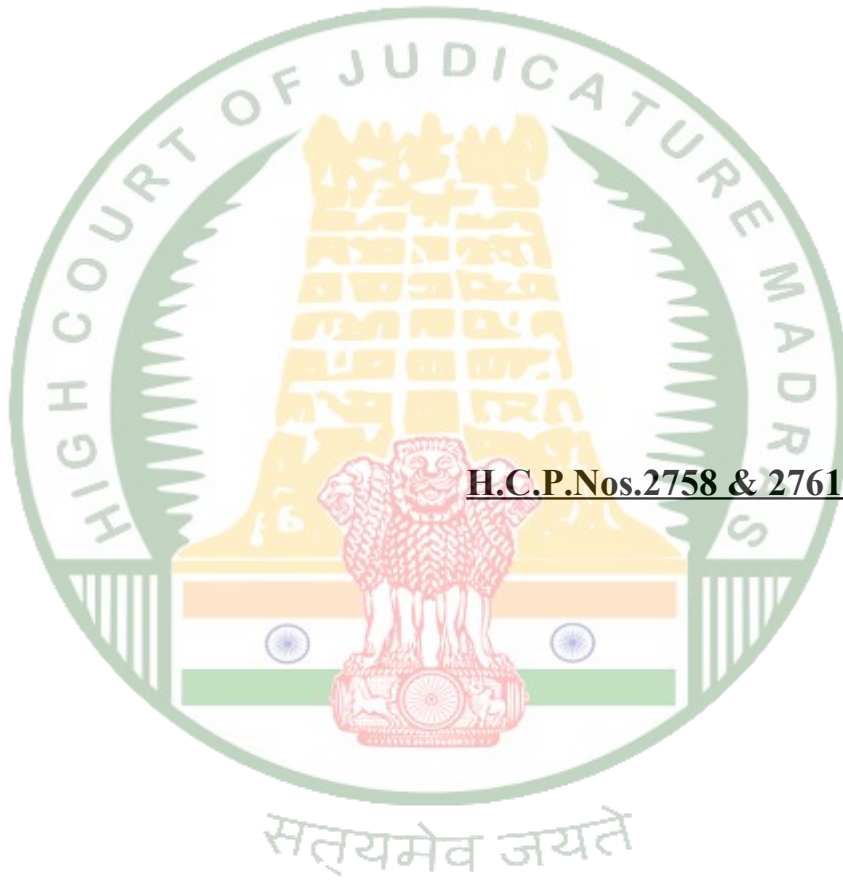
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AND
M. NIRMAL KUMAR,J.,

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