

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.No.2763 of 2018

Shankari

...Petitioner

Vs.

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

2.District Collector &  
District Magistrate,  
Vellore District,  
Vellore-9.

...Respondents

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 records in connection with the order of detention passed by the 2<sup>nd</sup> respondent dated 22.11.2018 in C3/D.O.No.96/2018 against the petitioner Uncle Chinraj @ Pattani, male aged 65 years S/o Chinnakuzhanthai, 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  
Additional Public

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O R D E R

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

The petitioner is the niece of the detenu and challenging the legality of the impugned Order of Detention dated 22.11.2018 passed by the 2<sup>nd</sup> respondent by invoking Section 2(b) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Bootlegger', came forward to file this Habeas Corpus petition.

2. A perusal of the grounds of detention would disclose among other things that the detenu came to adverse notice in the following case:

| SL. No. | Crime No.                     | Sections of law                                                | Date of occurrence |
|---------|-------------------------------|----------------------------------------------------------------|--------------------|
| 1.      | Vellore PEW<br>Cr.No.114/2014 | U/s.4(1)a TNP Act 1937                                         | 24.03.2014         |
| 2.      | Vellore PEW<br>Cr.No.120/2014 | U/s.4(1)a TNP Act 1937                                         | 27.03.2014         |
| 3.      | Vellore PEW<br>Cr.No.126/2014 | U/s.4(1) aa 4(1)i, 4(1-A)ii TNP Act 1937 r/w 420, 467, 471 IPC | 02.06.2014         |

It is further averred in the grounds of detention that the Inspector of Police attached to Vellore Prohibition Enforcement Wing has received a secret information at about 2.00 p.m on 28.09.2018 and therefore mounted surveillance and they found one Silver Colour TATA Indigo car bearing Reg.No.TN 30V 8259, was coming in that way and the car was stopped and the persons which include the detenu in the car were examined and it was found that they are transporting spurious liquor of 96 bottles of Mens Club Deluxe Brandy, each containing 180ml and 4 bottles of MC Dowells No.1 Celebration XXX Rum each containing 750ml and the detenu and co-accused were arrested at about 02.30 p.m on 28.09.2018 and later on, they were taken back to the police Station and they voluntarily came forward to give a confession statement and the same was recorded in the presence of witnesses and subsequently they brought to the Police Station and a case in Cr.No.378/2018 under Sections 4(1) aaa, 4(1-A)ii TNP Act 1937 r/w 468, 471, 420 IPC and Sections 6 and 7 of Tamil Nadu Rectified Spirit Rules, 2000 was registered. The detenu and his associates were produced before the Court of Judicial Magistrate No.III, Vellore on 29.09.2018 and they were ordered to be remanded to judicial custody till 12.10.2018 and the remand period was extended periodically.

3. The Detaining Authority, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, has already come to adverse notice in two cases and his acts are prejudicial to the maintenance of public order and accordingly, clamped the impugned order of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to the worksheet and would submit that for revoking the order of detention passed against the detenu, the post detention representations dated 12.12.2018 and 24.12.2018 were submitted and the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the said

representations on 08.01.2019 and the Hon'ble Minister for Electricity, Prohibition and Excise, dealt with the same on 16.01.2019 and even by excluding the public holidays, still there was a delay of 7 days in dealing with the said representations and in the absence of proper explanation, the said delay is fatal to the impugned order of detention and therefore, prays for appropriate orders.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State by drawing attention of this Court to the worksheet would submit that the delay cannot be construed as fatal and the 2<sup>nd</sup> respondent / Detaining Authority, after due and proper application of mind, has rightly clamped the order of detention and hence 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 appearing for the petitioner, the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the said representations on 08.01.2019 and the Hon'ble Minister for Electricity, Prohibition and Excise has dealt with the same on 16.01.2019 and even by excluding the public holidays, still there was a delay of 7 days in dealing with the said representations 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 detenu under Article 22 of the Constitution of India and hence on the sole ground, the impugned order of detention warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in proceedings C3/D.O.No.96/2018 dated 22.11.2018 is set aside and the detenu namely Chinraj @ Pattani, male, aged 65 years S/o Chinnakuzhanthai, who is confined at Central Prison, Vellore is set at liberty forthwith, unless his detention / custody is required in connection with any other case / proceedings.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sk

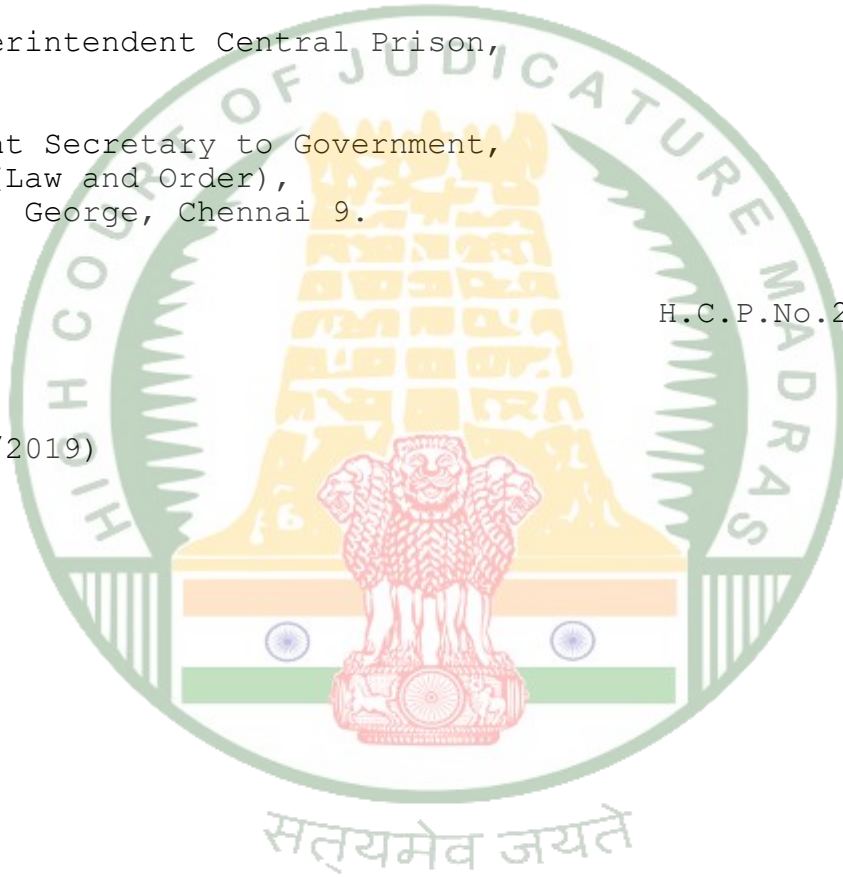
To:

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

H.C.P.No.2763 of 2018

CP (CO)

vkr (24/05/2019)



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