

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.04.2019

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2871 of 2018

Mrs.R.Usharani

.. Petitioner

Versus

1.The Government of Tamil Nadu  
Rep. by its Secretary,  
Home, Prohibition, Excise Department,  
Secretariat, Chennai-600 009.

2.The Commissioner of Police,  
Salem Police, Salem City.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to direct the respondents to produce the detenu Bathu @ Bathmanaban now confined at Central Prison, Salem before this Court and set him at liberty by setting aside the detention order passed in C.M.P.NO.46/Bootlegger/Salem City/2018 dated 27.07.2018.

For Petitioner : Mr.M.Muthukannan

For Respondents : Mr.C.Iyyappa Raj  
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the mother of the detenu, who, vide impugned Order of Detention dated 27.07.2018 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 cases:

| <i>Sl.No.</i> | <i>Crime No.</i>             | <i>Section of law</i> | <i>Date of occurrence</i> |
|---------------|------------------------------|-----------------------|---------------------------|
| 1.            | Ammapet PS<br>Cr.No.775/2017 | 4(1)(a) TNP Act       | 27.11.2017                |
| 2.            | Ammapet PS<br>Cr.No.826/2017 | 4(1)(a) TNP Act       | 19.12.2017                |
| 3.            | Ammapet PS<br>Cr.No.28/2018  | 4(1)(a) TNP Act       | 13.01.2018                |
| 4.            | Ammapet PS<br>Cr.No.31/2018  | 4(1)(a) TNP Act       | 14.01.2018                |
| 5.            | Ammapet PS<br>Cr.No.341/2018 | 4(1)(a) TNP Act       | 15.05.2018                |

It is further averred in the ground of detention that at about 19.15 hours on 08.07.2018, the Inspector of Police attached to Ammapet Police Station, on receipt of information about the public sitting on the road proceeded to the spot and found out one Rajasekar and their family used to sell liquor by adding something and his father also threatened the people resided in the said area to purchase liquor from him and on 08.07.2018, they wielded similar threat and search was made by the police authorities and they found that two persons were unloading cardboard boxes from one Innova Car. On seeing the police authorities, the detenu fed away from the scene of occurrence, however, the police caught hold of another person, who disclosed his identity as Sekar @ Rajasekar and seized brandy bottles kept in the said car and arrested him and he voluntarily came forward to give a confession statement and it left to the recovery of incriminating articles. The said person along with the seized articles were brought to Police Station, based on which, a case in Cr.No.454/2018 has been registered for the commission of offence under Sections 4(1)(aaa) & 4(1-A) Tamil Nadu Prohibition Act r/w 506(i) IPC. The detenu was apprehended on 10.07.2018 and he voluntarily came forward to give a confession statement and thereafter,

he was produced before the Court of Judicial Magistrate No.5, Salem on the same day and he was ordered to be remanded to judicial custody till 27.07.2018 and his remand period was further extended till 07.08.2018.

3. The Detaining Authority namely, the 2<sup>nd</sup> respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already come to adverse notice in five cases and his 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 Petition is filed.

4. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to Paragraph No.5 of the impugned order of detention and would submit that in order to derive the subjective satisfaction as to the real and imminent possibility of indulging in similar activities, the Detaining Authority has placed reliance upon the order dated 03.07.2014 in CrI.M.P.No.2372 of 2014 in Sevvapet Police station in Cr.No.342 of 2014 and would submit that such case cannot be treated as a similar case for the reason that apart from Section 4(1)(i), 4(1)(AAA), 4(1-A) TNMV Act, Sections 468, 471 and 420 IPC are also

added and the said order does not indicate the antecedents of the said accused and as such, the subjective satisfaction derived by the Detaining Authority is vitiated and hence prays for quashment of the impugned order of detention.

5. *Per contra*, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State would submit that the 2<sup>nd</sup> respondent / Detaining Authority, on a thorough consideration of entire materials and 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 entire materials placed before it.

7. As rightly pointed out by the learned counsel appearing for the petitioner, the above cited similar order cannot be construed as similar case for the reason that additional offences under Section 468, 471 and 420 have been added and that apart, the concerned accused in the said case have not got any adverse cases and whereas in the present case, the detenu is having five adverse cases and as such, the subjective

satisfaction as to the real and imminent possibility of the detenu, coming out on bail which are prejudicial to the public order and peace, is vitiated and hence, 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 C.M.P.NO.46/Bootlegger/Salem City/2018 dated 27.07.2018 is set aside and the detenu namely, Bathu @ Bathmanaban, who is now confined at Central Prison, Salem is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

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

15.04.2019

Internet : Yes/No  
Index : Yes/No

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To

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

2. The Commissioner of Police,  
Salem Police, Salem City.

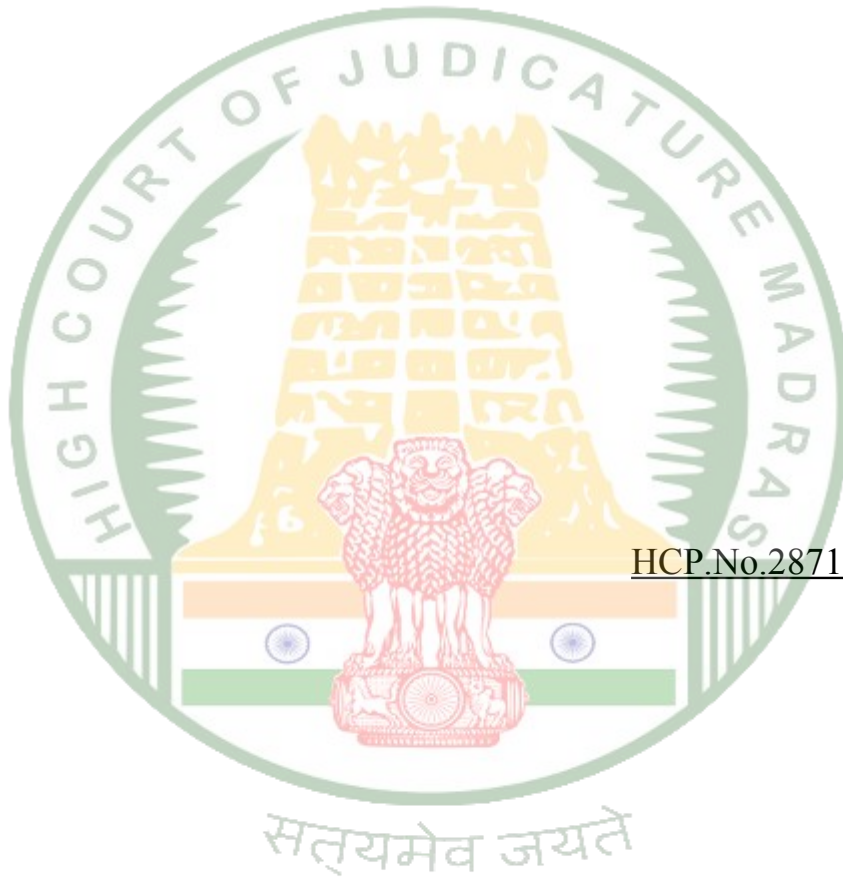
3. The Public Prosecutor  
High Court, Madras.

M.SATHYANARAYANAN, J.,

AND

M.NIRMAL KUMAR, J.,

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