

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM:

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

H.C.P.No.2920/2018

Valli

.. Petitioner

vs.

1.The State of Tamil Nadu rep.by
Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai, Veppery, Chennai-7.

.. 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 of the detention made in Memo No.1082/BCDFGISSSV/2018 dated 27.11.2018 passed by the Commissioner of Police, Greater Chennai, Veppery, Chennai-7, the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Tmt.Velazhagi, wife of Manivannan, aged 56 years now confined in Special Prison for Women, Puzhal, Chennai and set her at liberty.

For Petitioner .. Mr.R.Balakrishnan

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

ORDER

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

The sister of the detenu is the petitioner herein and challenging the legality of the impugned order of detention dated 27.11.2018 passed by the 2nd respondent, in and by which, the detenu has been branded as a 'Bootlegger' under the provisions of section 3[1] of the Tamil Nadu Prevention of dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders,

Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the present petition is filed.

2 A perusal of the Grounds of Detention dated 27.11.2018 would disclose that the impugned order of detention came to be passed based on a solitary incident which is said to have taken place at about 8.00 hour on 17.11.2018 and according to the Sponsoring Authority, the Sub Inspector of police attached to P3 Vyasarpadi Police Station, Law and Order, along with the police party, were conducting surveillance near the railway track behind Gandhipuram and at that time, they noticed two persons standing suspiciously, viz., a male person holding a black colour plastic bag and a female with a bandage over her right hand and on seeing the police party, they tried to flee away and both of them were caught and the bag possessed by the male person as examined and it was said to be containing 30 unsealed bottles of 180 ml brandy without any label and when the bottle was opened, it emanated a poisonous odour. The detainee Velazhagi along with the co-accused, viz., Manivannan, were arrested at about 8.00 hours on the same day after informing the reasons for the arrest and later on, both the accused along with the seized contraband were brought to the police station and a case in Crime No.731/2018 came to be registered for the commission of the offences u/s.4[1][a] read with 4[1-A] of TNP Act, 1937 and 328 IPC [ground case] and the Inspector of Police. The detainee was produced before the Court of V Metropolitan Magistrate, Egmore at Allikulam on 17.11.2018 and was remanded to judicial custody till 30.11.2018. The Detaining Authority on being satisfied that the above said activities of the detainee are prejudicial to the maintenance of public health and order, has derived the subjective satisfaction and as such, branded her as a 'Bootlegger' and detained her under the provisions of the Tamil Nadu Act 14 of 1982, by clamping the impugned order of detention and challenging the legality of the same, the present petition is filed.

3 The learned counsel for the petitioner has drawn the attention of this Court to page Nos.19 and 20 of the Booklet and would submit that in Column No.9 of the English version of the Arrest Intimation Form found in page No.19, the injuries found on the body of the arrested person has been noted as 'Right hand broken' ; whereas in the vernacular version, in page No.20, in respect of the very same column, it is stated as 'no such injury' . Learned counsel would point out to the said discrepancy and would submit that in the light of the said material discrepancy, the Detaining Authority ought to have sought for a clarification from the Sponsoring Authority and admittedly, it was not done so and as such, the same would exhibit non-application of mind on the part of the detaining

authority to the relevant materials and therefore, prays for quashment of the detention order.

4 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.

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

6 As rightly pointed out by the learned counsel for the petitioner, in the English version of the Arrest Intimation Form, in the relevant column, viz., in Column No.9, in respect of the injuries found on the body of the arrested person, it has been mentioned as 'right hand broken' whereas in the vernacular version, which is available in page No.20, it has been state as 'y;iy'. In the light of the said material discrepancy, the Detaining Authority ought to have sought for a clarification from the Sponsoring Authority and admittedly, in the case on hand, it has not been done so and as such, the subjective satisfaction derived by the Detaining Authority in that regard 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 27.11.2018 is hereby set aside. The detainee, who is now confined in the Special Prison for Women, Central Prison, Puzhal, Chennai, is directed to be released forthwith unless her presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai, Veppery, Chennai-7.

3.The Public Prosecutor,
Madras High Court, Madras.

4.The Superintendent
Central Prison, Special Prison for Women
Puzhal, Chennai-66.
(In duplicate for communication for detenu)

5.The Joint Secretary to Government,
Public (Law & Order), Fort St.George,
Chennai-9..

CSL/24.06.2019

H.C.P.No.2920/2018



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