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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P(MD)No.103 of 2019

Lathakumari

... Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings in Cr.M.P.No.02/2019, dated 11.01.2019 in detaining the detenu under Section 2(gg) of the Tamilnadu Act 14 of 1982 as a Sand Offender and quash the same and direct the respondents to produce the detenu namely Kakku @ Vijayakumar, S/o Aasaithambi, male, aged about 43 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.M.Karunakaran
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor
* * * * *

ORDER

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

The petitioner is the wife of the detenu and challenging the impugned order of detention, dated 11.01.2019, passed by the second respondent, under Section 3(1) 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 of 1982) and branding the detenu as



'Sand Offender' in Detention Order in Cr.M.P.No.02/2019, has filed the present Habeas Corpus Petition.

2. A perusal of grounds of detention order dated 11.01.2019 would disclose that the detenu came to adverse notice in the following cases:

(i) **Cr.No. 214 of 2017**, on the file of Thirumanur Police Station, under Sections 379 I.P.C., r/w 21(1)(a)(b) of Mines and Minerals (Development and Regulation) Act, 1957;

(ii) **Cr.No. 222 of 2017**, on the file of Thirumanur Police Station, under Sections 379 I.P.C., r/w 21(1)(a)(b) of Mines and Minerals (Development and Regulation) Act, 1957;

(iii) **Cr.No. 145 of 2017**, on the file of Venkanur Police Station, under Sections 379 I.P.C., r/w 21(1) of Mines and Minerals (Development and Regulation) Act, 1957;

(iv) **Cr.No. 139 of 2018**, on the file of Thirumanur Police Station, under Sections 379 I.P.C., r/w 21(1)(a)(b) of Mines and Minerals (Development and Regulation) Act, 1957; and

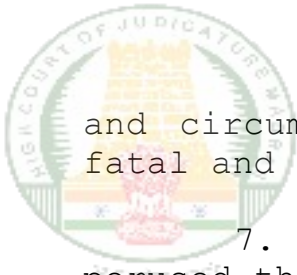
(v) **Cr.No. 158 of 2018**, on the file of Thirumanur Police Station, under Sections 379 I.P.C., r/w 21(1)(a)(b) of Mines and Minerals (Development and Regulation) Act, 1957.

3. It is further stated that the detenu was also involved in the commission of similar offence, which took place on 30.12.2018, which resulted in registration of a case in Cr.No.319 of 2018, under Sections 379 I.P.C., r/w 21(1)(a)(b) of Mines and Minerals (Development and Regulation) Act, 1957. The detenu was arrested and produced before the Court of Judicial Magistrate No.II, Ariyalur, on 01.01.2019 and he was remanded to judicial custody upto 03.01.2019.

4. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu would affect the drinking water sources, which resulted to prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

5. The learned Counsel appearing for the petitioner would submit that though the impugned order of detention came to be passed on 11.01.2019, the grounds of detention was served on 12.01.2019 and the booklet in support of the detention was served on 19.01.2019 and the same is in violation of Section 8(1) of the Tamil Nadu Act 14 of 1982 and hence, prays for quashment of the impugned order of detention.

<https://hcservices.ecourts.gov.in/hcservices/> For contra, the learned Additional Public Prosecutor appearing for the State would submit that considering the facts



and circumstances of the case, the delay cannot be said to be fatal and hence, prays of dismissal of the Habeas Corpus Petition.

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

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8. It is relevant to extract hereunder Section 8(1) of the Tamil Nadu Act 14 of 1982:

"Grounds of order of detention to be disclosed to persons affected by the order :- (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government."

9. A perusal of the grounds of detention and booklet would disclose that the impugned order of detention was passed on 11.01.2019 and the grounds of detention was served on 12.01.2019, whereas the booklet was supplied to the detenu only on 19.01.2019 and therefore, there was a delay in serving the booklet and as a consequence, the detenu was deprived of his valuable constitutional right for making effective representation for revoking the order of detention and therefore, on that ground, the impugned order of detention warrants interference.

10. In the result, this Habeas Corpus Petition is allowed and the order of detention in detention order Cr.M.P.No.02/2019, dated 11.01.2019 passed by the second respondent, is quashed and the detenu namely Kakku @ Vijayakumar, S/o Aasaithambi, is directed to be set at liberty forthwith, unless his remand/detention is required, in accordance with law, in connection with any other case/proceedings.

Sd/-

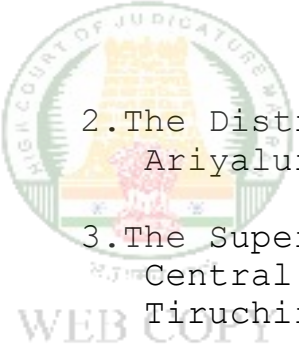
Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Police, Prison and Excise Department,
Fort St.George, Chennai-600 009.



2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

4.The Joint Secretary to Government,
Public (Law and Order),
For Saint George, Chennai-09.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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