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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.07.2019
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.167 of 2019

R.Santhi

...Petitioner

Vs.

1.State of Tamil Nadu, rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.

2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3.The Superintendent,
Central Prison.
Tiruchirappalli.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records in detention order passed in C.O.C.No.03/2019 dated 25.01.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the Petitioner's son namely Kumar, S/o. Rajendran, male, aged 35 years, who is detained in Central Prison, Tiruchirappalli before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

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

The petitioner is the mother of the detenu and challenging the legality of the impugned order of detention dated 25.01.2019 passed by the 2nd respondent, in and by which, the detenu has been



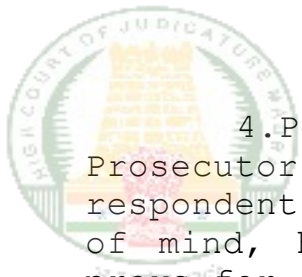
branded as a Boot-Legger under the provisions of section 3[1] of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), she came forward to file the present habeas corpus petition.

2. A perusal of the Grounds of Detention dated 25.01.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Kumar came to the adverse notice in the following three cases:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Nagapattinam P.E.W. Cr.No.1176 of 2016	4(1)(aaa) r/w 4(1-A) TNP Act, 1937 (Transport)
2.	Mayiladuthurai P.E.W. Cr.No.1075 of 2018	4(1)(aaa) r/w 4(1-A) TNP Act, 1937, 5 & 6 TNRS Rules (Transport)
3.	Mayiladuthurai P.E.W. Cr.No.731 of 2018	4(1)(aaa) r/w 4(1-A) TNP Act, 1937

It is further stated in the grounds of detention that the detenu has also involved in a commission of similar offence, which is said to have been took place on 16.12.2018 and in this regard Mayiladuthurai Prohibition Enforcement Wing has registered a case in Crime No.1205 of 2018 for the commission of offences under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) TNP Act, 1937 (ground case). The detenu was arrested on 16.12.2018 and subsequently, he was produced before the Court of Judicial Magistrate No.I, Mayiladuthurai and his remand has been periodically extended. The Detaining Authority on being satisfied that the activities of the detenu were prejudicial to the maintenance of the public order, branded him as a Boot-Legger and detained him 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 Habeas Corpus Petition is filed.

3.The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to paragraph 5 of the grounds of detention and would submit that the detenu has been under custody in connection with the third adverse case and the ground case and in the ground case the period of remand was extended till 08.02.2019 and in the third adverse case the period of remand was extended till 05.02.2019 and insofar as the subjective satisfaction is concerned the detaining authority has taken into consideration his incarceration only in connection with the ground case and not in respect of the third adverse case and since it is a vital defect, the impugned order is vitiated and hence, prays for quashment of the impugned order.



4. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State would submit that the 2nd 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.

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

6. As rightly submitted by the learned counsel appearing for the petitioner, a perusal of paragraph 5 of the grounds of detention would disclose that the detaining authority has taken into consideration the arrest and incarceration of the detenu only in connection with the ground case and not at all the arrest and incarceration in connection with the third adverse case. If it is so, the subjective satisfaction derived by the detaining authority that there is a real and imminent possibility of the detenu coming out bail and indulge in such further activities, which are prejudicial to the maintenance of public order and public health is vitiated. Unless he comes out on bail in the third adverse case, such conclusion cannot be reached and hence on the sole ground, the impugned order warrants interference.

7. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, the District Collector, Nagapattinam District in C.O.C.No.03/2019 dated 25.01.2019. Consequently, the detenu, namely, Kumar, son of Rajendran, aged about 35 years, who is now detained at Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

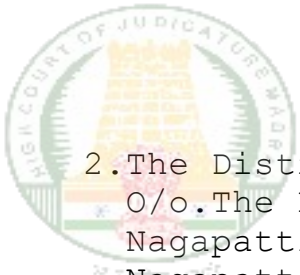
Assistant Registrar (AD-II)

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Sub Assistant Registrar (CS)

To

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



2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

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3.The Superintendent, Central Prison.
Tiruchirappalli.

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

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

sj

H.C.P(MD)No.167 of 2019

10.07.2019

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