



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P (MD)No.211 of 2019

S.Sabitha

...Petitioner

vs.

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

2.The District Collector and District Magistrate,
Office of the District Collector and
District Magistrate,
Nagapattinam District, Nagapattinam.

3.The Superintendent,
Central Prison, Tiruchirapalli.

...Respondents

PRAYER: This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the entire records in detention order, passed in C.O.C.No.08/2019, dated 19.02.2019 on the file of the second respondent herein and set aside the same as illegal and to direct the respondents to produce the body or person of the petitioner's husband, namely, Sathishkumar, S/o.Sekar, Male, aged 28 years, who is detained in Central Prison, Tiruchirappali before this Court and set him at liberty.

For Petitioner

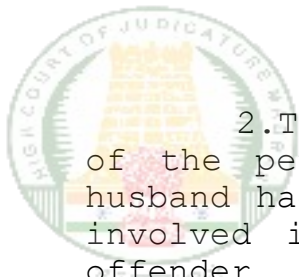
:Mr.K.A.S.Prabhu

For Respondents

:Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

This Habeas Corpus Petition has been filed challenging the detention order passed by the second respondent in C.O.C.No.08/2019, dated 19.02.2019.



2.The Sponsoring Authority had recommended for the detention of the petitioner's husband on the ground that the petitioner's husband had three adverse cases of similar nature and he was again involved in the ground case, and therefore, he is a habitual offender. The Detaining Authority, on being satisfied with the grounds placed before him, came to the conclusion that the petitioner's husband is a habitual offender and he was branded as "Boot-Legger" and the detention order was passed under Act 14 of 1982.

3.The learned Counsel for the petitioner submitted that the Detaining Authority was aware of the fact that there were three adverse cases pending against the detenu and in all the three cases, the detenu was arrested and was in judicial custody. However, while arriving at a subjective satisfaction, at paragraph 5 of the detention order, the Detaining Authority has made reference only to the bail petition filed in the ground case and there is, absolutely, no reference to the adverse cases. The learned Counsel for the petitioner pointing out to paragraph 5 of the detention order submitted that the Detaining Authority, after being aware of the fact that the detenu was not even released on bail in any of the adverse cases, ought to have taken that into consideration before arriving at a subjective satisfaction regarding the imminent possibility of the detenu coming out on bail. The learned Counsel further submitted that the bail petition, that was filed by the detenu, was dismissed by the concerned Court in the ground case and the subsequent bail petition filed before the Sessions Court was pending and therefore, the Detaining Authority has come to the subjective satisfaction on the ground that the higher Court will grant bail to the detenu by taking into consideration the extended incarceration suffered by the detenu in judicial custody. This fact according to the learned Counsel for the petitioner is not supported by any material and is not a valid ground for coming to such a subjective satisfaction.

4.Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

5.We are in agreement with the submissions made by the learned Counsel for the petitioner. The Detaining Authority, in spite of being aware of the fact that the detenu has already been arrested in all the three adverse cases and has not been let out on bail in any of those cases, ought to have necessarily taken that into account before coming to the subjective satisfaction regarding the imminent possibility of the detenu being released on bail. The Detaining Authority has taken into account only the bail petition, that was filed and pending in the ground case. This clearly reflects non-application of mind on the part of the Detaining Authority. Hence, the detention order passed by the second respondent suffers from non-application of mind and the same is



liable to be interfered with by this Court.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent, in C.O.C.No.08/2019, dated 19.02.2019 is set aside. The detenu, namely, Sathishkumar, S/o.Sekar, aged about 28 years, is directed to be released forthwith, unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.
2. The District Collector and District Magistrate,
Office of the District Collector and
District Magistrate,
Nagapattinam District, Nagapattinam.
3. The Superintendent,
Central Prison, Tiruchirapalli.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai - 9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P (MD) No.211 of 2019
04.09.2019

cmr

JMN(18.09.2019) 3P : 6C