



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.09.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

H.C.P. (MD)No.218 of 2019

Thulasi : Petitioner
Vs.

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

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

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

: Respondents

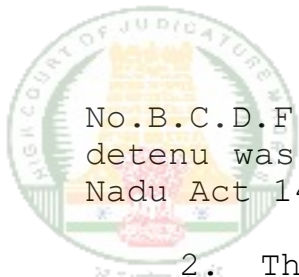
PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed by the second respondent in Detention Order No.B.C.D.F.G.I.S.S.S.V.No.10/2019 dated 21.02.2019 and quash the same and direct the respondents to produce the body or person of the detenu, namely, Thulasi, son of Rajamani, aged 38 years, who is detained in Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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

ORDER

Challenge is made to the order of detention passed by the second respondent vide proceedings in Detention Order



No.B.C.D.F.G.I.S.S.S.V.No.10/2019, dated 21.02.2019, whereby the detenu was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding him as a "BOOTLEGGER".

2. The petitioner has come to the adverse notice of the sponsoring authority in Crime No.183 of 2019 and the petitioner was again involved in the ground case and therefore, the sponsoring authority had recommended for the detention of the petitioner since he happens to be the habitual offender and consequently, the second respondent has passed Detention Order by branding the petitioner as a 'BOOTLEGGER'.

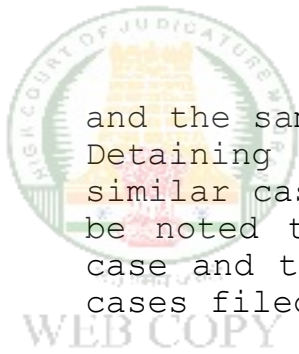
3. The learned counsel for the petitioner submitted that there is total non-application of mind on the part of the second respondent while coming to the subjective satisfaction with regard to the imminent possibility of the detenu being released on bail. The learned counsel submitted that the Detaining Authority was aware about the petitioner being arrested and remanded to judicial custody in the adverse case in Crime No.183 of 2019. However at paragraph No.5 of the Detention Order, the Detaining Authority has taken into consideration only the bail petition that was filed in the ground case and there is absolutely no reference to the adverse case, in which the petitioner was already suffering incarceration. The learned counsel therefore submitted that the Detention Order suffers from non-application of mind and the Detaining Authority has presumed that in similar cases, the accused are granted bail by the concerned court, without there being any materials to apply the same to the case of the petitioner.

4. In order to substantiate his submissions, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court in ***Rekha vs. State of Tamil nadu***, reported in **2011(5) SCC 244**.

5. We have carefully considered the submissions made on either side and the materials available on record.

6. It is seen from the Detention Order that the Detaining Authority was aware about the petitioner having been remanded to judicial custody in the adverse case in Crime No.183 of 2019 and as on the date of passing the Detention Order, the petitioner continued to be in judicial custody in the adverse case. However, while coming to the subjective satisfaction with regard to the imminent possibility of the petitioner being released on bail, the Detaining Authority has not taken into consideration the incarceration suffered by the petitioner in the adverse case.

7. The Detaining Authority has merely taken into consideration only the ground case, where the petitioner has filed a bail petition



and the same was pending before the concerned Sessions Court and the Detaining Authority has taken into consideration bail granted in similar cases to other accused persons by the higher court. It is to be noted that the co-accused has not been given any bail in this case and the Detaining Authority has only made reference to similar cases filed by some other accused persons.

8. The Detention Order suffers from non-application of mind due to two reasons. The first reason is that the Detaining Authority did not taking into consideration the incarceration suffered by the petitioner in the adverse case as on the date, when the Detention Order was passed. The second reason is that the Detaining Authority has come to a subjective satisfaction only on the ground that some other accused persons, who are involved in similar cases, have been released on bail by the higher court.

9. The Hon'ble Supreme Court has categorically held in the above judgment that the accused persons, who are similarly placed being granted bail by the same Court or by a higher Court, cannot be a ground for the Detaining Authority to come to such a subjective satisfaction without there being any materials to substantiate the same. This by itself reflects non application of mind on the part of the Detaining Authority. Therefore, the order of detention is liable to be interfered with.

10. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order No.B.C.D.F.G.I.S.S.S.V.No.10/2019 dated 21.02.2019, is hereby quashed. The detenu, namely, Thulasi, son of Rajamani, aged 38 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

PJL

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.



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

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

4.The Joint Sectretary to Government
Public(Law&order)
Fort St. George, Chennai - 600 009.

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

Order made in
H.C.P. (MD)No.218 of 2019
04.09.2019

KM/ (25.09.2019) 4P 6C