



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2019

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

H.C.P(MD)Nos.97 and 101 of 2019

H.C.P. (MD)No.97 of 2019

Jeyaseelan

... Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed in P.D.No.03/2019, dated 09.01.2019, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Jeyaseelan, aged about 34 years, S/o Gnanasigamani, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

**H.C.P. (MD) No.101 of 2019**

Sahaya Sheeba

... Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Special Prison for Women,
Madurai.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed in P.D.No.04/2019, dated 09.01.2019, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Sahaya Sheeba, aged about 23 years, W/o Jeyaseelan, now detained at the Special Prison for Women, Madurai, before this Court and set her at liberty forthwith.

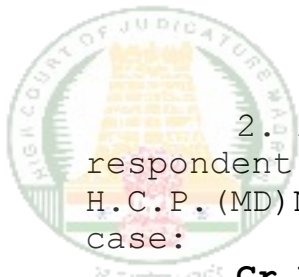
For Petitioner
in both petitions : Mr.N.Pragalathan

For Respondents
in both petitions : Mr.K.Dinesh Babu
Additional Public Prosecutor

* * * * *

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

The detenus themselves are the petitioners and challenging the impugned orders of detention dated 09.01.2019 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 branded them as 'Bootlegger' in P.D.No.03/2019 and P.D.No.04 of 2019 respectively, have filed the present Habeas Corpus Petitions.



2. A perusal of the grounds of detention passed by the second respondent dated 09.01.2019, would disclose that the detenu in H.C.P.(MD)No.97 of 2019 came to adverse notice in the following case:

Cr.No.823 of 2018 on the file of Thuckalay Prohibition Enforcement Wing, under Section 4(1-A), 4(1)(i), 14A and 24 of Tamil Nadu Prohibition Act, 1937.

It is further averred that the Inspector of Police, Prohibition Enforcement Wing, Nagercoil, along with the police party, were conducted vehicle check near Aathubalam at Chenbagaramanpudur - Thuvarankadu road and when they signalled to stop one motorcycle bearing Registration No.TN-75-U-4423, which was driven by the detenu in H.C.P.(MD)No.97 of 2019 and the detenu, on seeing the police party, tried to flow away from the place and he caught by the police party and when the police party checked the motorcycle, it was found that 100 liquor bottles, each containing 180ml spurious liquor with poisonous smell labelled as "Copper Barrel Vsop Brandy". The police, after completing the statutory formalities, had effected the arrest of the detenu at about 06.15 hours and thereafter, he voluntarily came forward to give a confession statement stating among other things that his wife - detenu in H.C.P.(MD)No.101 of 2019 also involved in a similar case. The premises of both the detenu were searched and yielded very huge quantity of spurious liquor and incriminating articles were also seized. The detenu and his associate as well as his wife were arrested on 09.12.2018 and were produced before the Court of Judicial Magistrate, Boothapandy and remanded to judicial custody on that day and their remand period has been extended periodically.

3. The detaining authority, on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petitions have been filed by the petitioners.

4. The learned Counsel appearing for the petitioners would draw the attention of this Court to paragraph No.5 of the impugned detention order and would submit that the detenu in H.C.P.(MD)No.97 of 2019 as well as his wife /petitioner in H.C.P.(MD)No.101 of 2019 filed applications for bail before the Court of the Principal Sessions Judge, Kanniyakumari District at Nagercoil and both were dismissed on 20.12.2018 and the detaining authority, in order to arrive at a subjective satisfaction that there is a real and imminent possibility of their coming out on bail and would indulge in such further activities, which are prejudicial to the maintenance of public order, has placed reliance upon the order granting bail in similar case registered by the Thiruvattar Police Station, in Cr.No.670 of 2015, in which, the concerned detenu has filed an application for bail in CrI.M.P.No.2088 of 2016 and vide order dated 02.05.2016, he was enlarged on bail.



5. The learned Counsel appearing for the petitioner has drawn the attention of this Court to page Nos.264 and 265 of the booklet and would submit that the case cannot be cited as a similar one, for the reason that the concerned accused therein was enlarged on statutory bail, since the charge was not filed within the stipulated period and since it is a default bail, it cannot be treated as a similar bail and therefore, the subjective satisfaction arrived at by the detaining authority is vitiated and hence, prays for quashment of the impugned orders of detention.

6. Per contra, the learned Additional Public Prosecutor appearing for the State has drawn the attention of this Court to the counter affidavit filed by the second respondent and would submit that the detaining authority, on proper application of mind, has taken into consideration all the materials and the report submitted by the sponsoring authority, has passed the detention order and hence, prays for dismissal of the Habeas Corpus Petitions.

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

8. As rightly pointed out by the learned Counsel appearing for the petitioner, a similar case referred by the detaining authority in order to arrive at a subjective satisfaction that there is a real and imminent possibility of his coming out on bail, cannot be considered as a similar case, for the reason that the concerned accused therein was also enlarged on statutory bail / default bail and therefore, the subjective satisfaction arrived at by the detaining authority, is wholly vitiated and hence, on the sole ground, the impugned orders of detention warrant interference.

9. In the result,

(i) H.C.P.(MD)No. 97 of 2019 is allowed and the order of detention in P.D.No.03/2019, dated 09.01.2019, passed by the second respondent, is quashed and the detenu namely Jeyaseelan, S/o Gnanasigamani, 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.

(ii) H.C.P.(MD)No.101 of 2019 is allowed and the order of detention in P.D.No.04/2019, dated 09.01.2019, passed by the second respondent, is quashed and the detenu namely Sahaya Sheeba, w/o Jeyaseelan, is directed to be set at liberty forthwith, unless her remand/detention is required, in accordance with law, in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CO)

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To

1.The 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,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Special Prison, Palayamkottai,
Tirunelveli.

4.The Superintendent of Prison,
Central Prison for Women,
Madurai.

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

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

H.C.P(MD)Nos.97 and 101 of 2019

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