



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P.(MD)No.1757 of 2018

Poongodi

: Petitioner

Vs.

1.The Principal Secretary to the Government
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

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

3.The Superintendent of Prison
Central Prison, Madurai

: 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 records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in BCDFGISSV No.11/2018 dated 04.12.2018 in detaining the detenu under Section 2(b) of the Tamil Nadu Act 14 of 1982 as a Bootlegger and quash the same and direct the respondents to produce the detenu namely, Rajiv Gandhi, S/o.Ragavan, male, aged about 34 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner

: Mr.C.Jeganathan for
M/s.Veera Associates

For Respondents

: Mr.M.Chandrasekaran
Additional Public Prosecutor

ORDER

P . N . PRAKASH, J

The petitioner is the mother of the detenu viz., Rajiv Gandhi, S/o.Ragavan, aged about 34 years. The detenu has been detained, as per the order of the second respondent, dated 04.12.2018, under Section 2(b) of the Tamil Nadu Act 14 of 1982, branding him as "BOOTLEGGER". Challenging the same, the petititoner is before this Court in this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.



3. In Paragraph No.5 of the detention order, it is stated as follows:

"5. I am aware that Rajiv Gandhi has been remanded to judicial custody by Judicial Magistrate Court, Thirumangalam in connection with the case of Thirumangalam Prohibition Enforcement Wing Cr.No.1387/18 u/s 4(1)(a), 4(1-A) TNP Act (Transport) @ 4(1)(a), 4(1)(aaa), 4(1)(i), 4(1-A) TNP ACT (Transport) r/w Sec -7 TNP Act and he is a remand prisoner and lodged in Thirumangalam Sub-Jail, till 08.11.2018. His remand was lastly extended upto 06.12.18. In this case he filed a bail petition before the Principal District Sessions Court, Madurai, vide Cr.M.P.No.5505/2018, dated 12.11.2018 and the same is pending.

In this case the accused 1 to 3 are released on bail. Therefore, there is a real possibility of Rajiv Gandhi coming out on bail in ground case in Thirumangalam Prohibition Enforcement Wing no.1387/18 u/s 4(1)(a), 4(1-A) TNP ACT (Transport) @ 4(1)(a), 4(1)(aaa), 4(1)(i), 4(1-A) TNP Act (Transport) r/w sec-7 TNP ACT."

4. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner, by inviting the attention of this Court to paragraph No.5 of the grounds of detention, submitted that the Detaining Authority, while arriving at a subjective satisfaction as to the imminent possibility of the detenu coming out on bail in the above said case, has observed that the detenu has filed a bail application in the ground case and the same is pending. It is further observed that the accused Nos.1 to 3 were released on bail in the said case and that there is a real possibility of the detenu coming out on bail, as he is also one of the accused in the said case. However, the detaining authority has not furnished any particulars as to the bail applications filed by the accused 1 to 3 and also the orders passed by the concerned Court granting bail to them. Therefore, it is the submission of the learned counsel for the petitioner that in the absence of such particulars, the detenu has been denied the opportunity of making effective representations to defend his case, which vitiates the detention order.

5. The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

6. We have considered the submissions made by the learned counsel for the petitioner and the learned Additional Public Prosecutor for the State and perused the grounds of the detention order and connected materials. Upon perusing the grounds of detention, especially Paragraph No.5, we see force in the



contention of the learned counsel for the petitioner that though the Detaining Authority, while arriving at a subjective satisfaction, has observed that the co-accused 1 to 3 were released on bail in Crime No.1387/18, except the ipse-dixit statement of the Detaining Authority, no other materials have been furnished to the detenu as to the bail applications filed by the co-accused in the said case. The absence of such materials vitiate the detention order. Therefore, on that score alone, the order of detention is liable to be set aside.

7. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in BCDFGISSV No.11/2018 dated 04.12.2018, is quashed. The detenu, namely Rajiv Gandhi, S/o.Raghavan, aged about 34 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 (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary to the Government
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

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

3.The Superintendent of Prison
Central Prison,
Madurai

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

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

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-61713[F] dated
23/04/2019)