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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD) No.1777 of 2018

Jothi @ Gnanajothi

... 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,
O/o the District Collector and
District Magistrate,
Ariyalur District, Ariyalur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... 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 in detention order passed in Cr.M.P.No.30/2018, dated 03.12.2018, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Jothi @ Gnanajothi, S/o Ramadevu Pillai @ Ramajayam Pillai, male, aged 44 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

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

For Respondents : Mr.K.Dinesh Babu

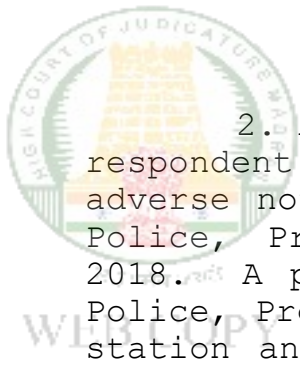
Additional Public Prosecutor

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ORDER

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

The detenu himself is the petitioner and challenging the impugned order of detention dated 03.12.2018, 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 him as Bootlegger in Cr.M.P.No.30/2018, has filed the present Habeas Corpus Petition.



2. A perusal of the grounds of detention passed by the second respondent dated 03.12.2018, would disclose that the detenu came to adverse notice in the solitary case registered by the Inspector of Police, Prohibition Enforcement Wing, Ariyalur in Cr.No.1919 of 2018. A perusal of the case would disclose that the Inspector of Police, Prohibition Enforcement Wing, Ariyalur was in-charge of the station and at that time, the Sub-Inspector of Police submitted a special report stating that a secret information has been received by him that in Karkudi village, there was movement of the suspected persons and preparation of curious liquor. Accordingly, he along with the police team went to the concerned place and they found out storing of curious liquor and materials were also seized and four persons found thereto were also taken into custody and subsequently, a case in Cr.No.1919 of 2018 was registered for the commission of offences under Section 4(1)(g) of Tamil Nadu Prohibition Act-1937 r/w 466, 468, 474, 420, 511, 328 I.P.C., and Sections 6, 24(1) of Cigarette and other Tobacco products Act, 2003. The detenu and other co-accused were produced before the Court of the Judicial Magistrate No.I, Jayankondam for judicial remand and they are in custody till 05.12.2018.

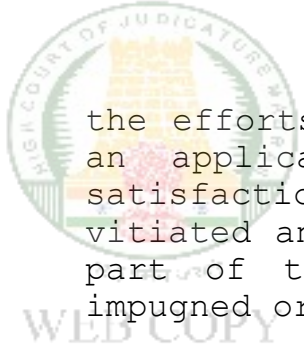
3. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed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

4. The learned Counsel appearing for the petitioner would draw the attention of this Court to paragraph No.5 of the impugned detention order and would submit that admittedly, the petitioner has not filed any application for bail and in order to arrive at a subjective satisfaction that the detenu is likely to come out on bail and would indulge in such activities which are prejudicial to the maintenance of public order, no material including the statements of the relatives as to the efforts taken to get the detenu on bail and in the absence of such vital material, the subjective satisfaction arrived at by the detaining authority in this regard, is wholly vitiated and hence, prays for quashment of the impugned order of detention.

5. Per contra, the learned Additional Public Prosecutor has drawn the attention of the 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 passed the detention order and hence, prays of dismissal of the Habeas Corpus Petition.

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

7. As rightly pointed out by the learned Counsel appearing for the petitioner, in the absence of any specific material as to



the efforts taken either by the detenu or by his relatives to file an application for bail in the ground case, the subjective satisfaction arrived at by the detaining authority, is wholly vitiated and it would also amount to non-application of mind on the part of the said Official and hence, on the sole ground, the impugned order of detention warrants interference.

8. In the result, this Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.30/2018, dated 03.12.2018 passed by the second respondent, is quashed and the detenu namely Jothi @ Gnanajothi, S/o Ramadevu Pillai @ Ramajayam Pillai 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.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.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,
Ariyalur District, Ariyalur.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai-09.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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