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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2019

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.1608 of 2018

Thamizharasan

... 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

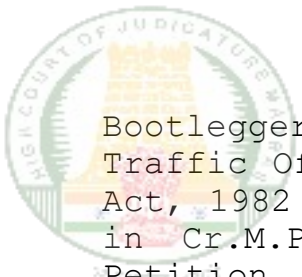
Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records in detention order passed in Cr.M.P.No.26 of 2018, dated 03.11.2018, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Thamizharasan, S/o Selvaraj, male, aged 32 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
<https://hcservices.ecourts.gov.in/hcservices/>
impugned order of detention dated 03.11.2018, 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 branding him as 'Goonda' in Cr.M.P.No.26 of 2018, has filed the present Habeas Corpus Petition.

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2. A perusal of the grounds of detention dated 03.11.2018 would disclose among other things that the detenu came to adverse notice in the following 13 cases:

(i) **Cr.No.165 of 2017** on the file of Jayakondam Police Station, under Section 4(1)(k) of Tamil Nadu Prohibition Act, 1937.

(ii) **Cr.No.196 of 2017** on the file of Jayankondam Police Station, under Section 4(1)(k) of Tamil Nadu Prohibition Act, 1937.

(iii) **Cr.No.469 of 2017** on the file of Jayankondam Police Station, under Section 4(1)(a) 4(1-A) of Tamil Nadu Prohibition Act, 1937.

(iv) **Cr.No.636 of 2017** on the file of Ariyalur Prohibition Enforcement Wing, under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937.

(v) **Cr.No.898 of 2017** on the file of Ariyalur Prohibition Enforcement Wing, under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937.

(vi) **Cr.No.954 of 2017** on the file of Ariyalur Prohibition Enforcement Wing, under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937.

(vii) **Cr.No.1093 of 2017** on the file of Ariyalur Prohibition Enforcement Wing, under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937.

(viii) **Cr.No.155 of 2018** on the file of Jayankondam Police Station, under Section 4(1)(aaa) of Tamil Nadu Prohibition Act, 1937.

(ix) **Cr.No.262 of 2018** on the file of Jayankondam Police Station, under Section 4(1)(k) of Tamil Nadu Prohibition Act, 1937.

(x) **Cr.No.679 of 2018** on the file of Ariyalur Prohibition Enforcement Wing, under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937.

(xi) **Cr.No.1164 of 2018** on the file of Ariyalur Prohibition Enforcement Wing, under Section 4(1)(k) of Tamil Nadu Prohibition Act, 1937.

(xii) **Cr.No.1212 of 2018** on the file of Ariyalur Prohibition Enforcement Wing, under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937.

(xiii) **Cr.No.1445 of 2018** on the file of Ariyalur Prohibition Enforcement Wing, under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937.

3. A perusal of the grounds of detention would disclose, among other things, that on 02.10.2018, the Special Sub-Inspector of Police, Jayankondam Police Station along with police party kept surveillance and on receipt of credible information, he rushed to Variyankaval and kept surveillance and on seeing them, the detenu



tried to escape from that place and he was brought and on examination, he was found in possession of curious brandy.

4. The detenu was arrested and thereafter, brought to Jayankondam Police Station along with the seized contrabands and a case in Cr.No.342 of 2018, for the commission of offences under Section 4(1)(a), 4(1-A) of Tamil Nadu Prohibition Act, 1937 r/w 328 I.P.C., was registered. The detenu was produced before the Court of Judicial Magistrate No.I, Jayankondam on 02.10.2018 and remanded to judicial custody on that day and his remand period was extended till 30.10.2018 and 13.11.2018 respectively.

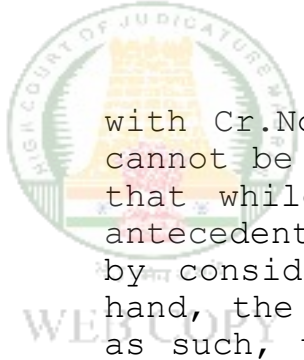
5. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed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

6. The learned Counsel appearing for the petitioner would draw the attention of this Court to paragraph No.5 of the grounds of detention and would submit that 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 and would indulge in such further activities, which are prejudicial to the maintenance of public order, has placed reliance upon the order granting bail by the Principal Sessions Court, Tiruchirappalli in Cr.M.P.No.146/2015 in connection with Cr.No.36 of 2015, registered by the Tiruchirappalli City PEW and his primordial submission is that the order cannot be said to be similar for the reason that in the said case, the bail was granted by the Principal Sessions Judge, Tiruchirappalli by considering the period of incarceration of the petitioner therein, whereas in this case, the detenu is having summons in 12 adverse cases and as such, there is no real possibility of the detenu coming out on bail and hence, prays for quashment of the impugned detention order.

7. Per contra, the learned Additional Public Prosecutor appearing for the State 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 the report submitted by the sponsoring authority, has passed the detention order and hence, prays of dismissal of the Habeas Corpus Petition.

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

9. As rightly pointed by the learned Counsel appearing for the petitioner, a perusal of Paragraph No.5 of the detention order, would disclose that the order granting bail by the Principal Sessions Court, Tiruchirappalli in Cr.M.P.No.146/2015 in connection



with Cr.No.36 of 2015, registered by the Tiruchirappalli City PEW cannot be said to be similar to that of the detenu, for the reason that while granting the order, the Court does not refer to the antecedents of the petitioner therein and he was enlarged on bail by considering the period of incarceration, but in the case on hand, the detenu was said to have involved in 12 adverse cases and as such, there was a remote chance of coming out on bail, but the said aspect is not at all taken into consideration by the detaining authority and hence, on that sole ground, the impugned detention order warrants interference.

10. In the result, this Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.26/2018, dated 03.11.2018 passed by the second respondent, is quashed and the detenu namely Thamizharasan, S/o Selvaraj, 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

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Sub Assistant Registrar(CS)

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- 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 & Order), Fort Saint George, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.K.A.S.PRABHU, Advocate Sr. No. 66839

H.C.P(MD)No.1608 of 2018
03.06.2019

KMR(CO)

TR (14.06.2019) 4P 7C

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