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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2019

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD) No.1832 of 2018

Annammal

... Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
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,
Dindigul District,
Dindigul.

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the entire records connected with the detention order of the second respondent in Detention Order No.108/2018, dated 20.12.2018 and quash the same and direct the respondents to produce the body or person of the detenu, by name, Chinnappan @ Thuyaram, son of Muthaiah, aged about 65 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Dr.R.Alagumani

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

* * * * *

ORDER

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

The petitioner is the wife of the detenu and challenging the legality of the impugned order of detention dated 20.12.2018, 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 branding him as 'Drug Offender' in Detention Order No.108/2018, came forward to file the present Habeas Corpus Petition.



2. A perusal of the grounds of detention dated 20.12.2018 would disclose, among other things, that the detenu came to be adverse notice in the following cases:

"(i) Cr.No.234 of 2017 on the file of Dindigul Town South Police Station registered under Section 8 (c) r/w Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985;

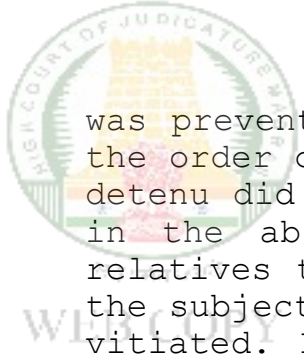
(ii) Cr.No.363 of 2017 on the file of Dindigul Town South Police Station registered under Section 8 (c) r/w Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985; and

(iii) Cr.No.394 of 2018 on the file of Dindigul Town South Police Station registered under Section 8(c) r/w Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985."

It is further stated that on 23.10.2018 at 09.30 hours, the Sub Inspector of Police attached to Dindigul Town South Police Station has appeared in the Station and filed a special report. On receipt of secret reliable information from an informant about possession and sale of ganja, he mounted surveillance and accordingly, raided the house of the detenu and search revealed that he was in possession of 22 Kgs., of ganja. The detenu voluntarily came forward to give a confession statement which led to the seizure of ganja and later on, he was brought to Dindigul Town South Police Station and a case in Cr.No.628 of 2018 under Section 8(c) r/w Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The detenu was produced before the learned Judicial Magistrate No.III, Dindigul on 23.10.2018 and remanded till 02.11.2018 and the period of remand was extended upto 28.12.2018.

3. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu with an intention to sell narcotic drug, 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 has drawn the attention of this Court to paragraph 5 of the grounds of detention and would submit that the detenu is in custody in connection with the ground case and admittedly, he has not filed any application for bail in the ground case and in order to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail and indulging in such activities prejudice to the maintenance of public order, the detaining authority placed reliance on the order granting bail in similar case in CrI.O.P.(MD) No.13789 of 2013, dated 18.09.2013. Drawing the attention of this Court to page Nos.131 and 132 of the typed set of documents, it is the primordial submission of the learned Counsel for the petitioner that the said order is wholly illegible and therefore, the detenu



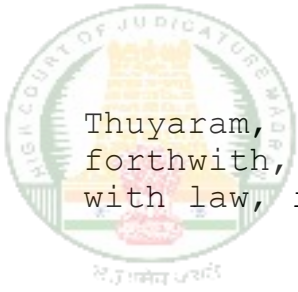
was prevented from making any effective representation for revoking the order of detention. It is further submitted that admittedly, the detenu did not file any application for bail in the ground case and in the absence of any vital material as to the detenu or his relatives taking steps to file bail application in the ground case, the subjective satisfaction arrived at by the detaining authority is vitiated. It is also the further submission of the learned Counsel for the petitioner that for revoking the order of detention, the detenu has also submitted a post-dated representation on 21.12.2018 and it was dealt with the Home, Prohibition and Excise (XIII) Department, and the remarks were called for on 02.01.2019 and reminder was sent on 21.01.2019 and the respective Secretaries dealt with the same on 05.02.2019 and even by excluding the Government holidays, there is a delay of 14 days in considering the representation of the detenu and in the light of the infirmities pointed out, the impugned order of detention is vitiated and prays for quashment of the order of detention.

5. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the detaining authority, on proper application of mind and after taking into consideration all the materials and the report submitted by the sponsoring authority, has passed the detention order and the subjective satisfaction arrived at by the detaining authority, in the facts and circumstances of the case, cannot be said to be fatal and hence, prays for dismissal of the Habeas Corpus Petition.

6. This Court has carefully 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, the order granting bail in a similar case relied on by the detaining authority which is available at page Nos.131 and 132, is wholly illegible and in the considered opinion of this Court, on account of furnishing of illegible copy of the order passed in similar case, the valuable right of the detenu was prevented from making effective representation for revoking the order of detention and the same would be in violation of Article 22 (5) of the Constitution of India and that apart, the sponsoring authority failed to place the material whatsoever as to either the detenu or his relatives taking steps to file bail application in the ground case and in the absence of such vital material, the subjective satisfaction arrived at by the detaining authority as to the real possibility of the detenu coming out on bail, is wholly vitiated. Moreover, there was a considerable delay in receiving the remarks as pointed out earlier and therefore, on that ground also, the impugned order of detention passed by the second respondent warrants interference.

8. In the result, this Habeas Corpus Petition is allowed and the Detention Order No.108/2018, dated 20.12.2018 passed by the second respondent, is quashed and the detenu, namely, Chinnappan @



Thuyaram, son of Muthaiah, 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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To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
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,
Dindigul District,
Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**H.C.P (MD) No.1832 of 2018
12.06.2019**

CS: (21/06/2019) 4P 5C