



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.1654 of 2018

Poongodi

... Petitioner

-vs-

1.State of Tamil Nadu, rep. 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
Nagapattinam District, Nagapattinam

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 calling for the entire records in detention order passed in C.O.C.No.58/2018 dated 12.11.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Kollakattu Kumar @ Kumar, S/o. Kunjali, male, aged 45 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.M.Chandrasekaran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

The second respondent clamped an order of detention on 12.11.2018, as against Kollakattu Kumar @ Kumar, son of Kunjali, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Boot-Legger' and he has to be detained under Section 3(1) of Tamil Nadu Act 14 of 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.

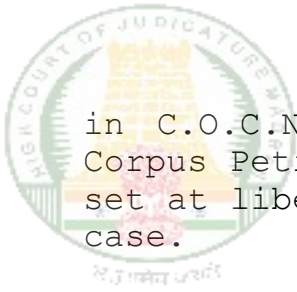
2. Challenging the order of detention, the wife of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents.

4. The learned counsel for the petitioner would submit that there is total non-application of mind on the part of the detaining authority in passing the detention order, as, according to him, no bail application was pending in the ground case at the time of passing the detention order. However, the detention order has been passed by placing reliance upon the bail order granted in the adverse case by the District Sessions Court, Nagapattinam, and stated that there is likelihood of the detenu coming out on bail in the ground case also. Thus, according to the learned counsel, there is non-application of mind on the part of the detaining authority.

5. As rightly contended by the learned counsel for the petitioner, no bail application was pending in the ground case at the time of passing the impugned detention order. However, the detaining authority proceeded further to express subjective satisfaction that there was real possibility of the detenu coming out on bail, as in the adverse case the District Sessions Court granted bail to the detenu, which shows total non-application of mind. Such a comparison of bail order passed in the adverse case, when no bail application was pending in the ground case, to express subjective satisfaction of the real possibility of the detenu coming out on bail is against the dictum laid down by a Larger Bench of the Supreme Court in ***Rekha vs. State of Tamil Nadu [(2011) 5 SCC 244]***, followed by a Division Bench of the Supreme Court in ***Huidrom Konungjao Singh vs. State of Manipur and others [(2012) 7 SCC 181]*** and by this Court in an unreported decision in ***H.C.P.(MD) No.1567 of 2015 [Sri Devi vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]***, vide order dated 14.12.2015. Therefore, on this sole ground alone, the impugned detention order is liable to be set aside.

6. The detention order passed by the second respondent detaining the detenu Kollakattu Kumar @ Kumar, son of Kunjali, made



in C.O.C.No.58/2018, dated 12.11.2018, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith unless his custody is required in any other case.

WEB COPY

Sd/-

Assistant Registrar (Records)

// 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,
Nagapattinam District, Nagapattinam.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government, Public (Law and Order),
Fort St.George, Chennai 9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.A.S.PRABHU, Advocate, SR.No. 61841

H.C.P. (MD) No.1654 of 2018

22.04.2019

KRK

KK/SAR/21.05.2019/ 3P- 7C