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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.SUBBIAH

AND

THE HON'BLE Mr. JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1696 of 2018

Viji

... Petitioner

Vs.

1.State of Tamil Nadu,
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.

2.The Superintendent,
Central Prison,
Tiruchirapalli.

... Respondents

PRAYER: The 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.60/2018, dated 22.11.2018 on the file of the 2nd respondent and set aside the same as illegal and direct the respondents to produce the person or body of the petitioner's husband namely, Annadurai, son of Kathamuthu, male, aged 46 years, who is detained in Central Prison Tiruchirappalli before this Court and set him at liberty.

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

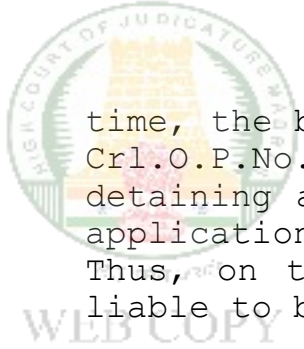
For Respondents : Mr.V.Neelakandan, APP

ORDER

(Order of the Court was made by R.SUBBIAH,J.)

The petitioner challenges the order of detention dated 22.11.2018 passed by the second respondent in his proceedings in C.O.C.No.60/2018, detaining the detenu as 'Boot-Legger', as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982.

2.When the matter was taken up for consideration, the learned counsel for the petitioner submitted that the Detaining Authority, while arriving at subjective satisfaction that the detenu conformed to the definition of "Boot-Legger", in paragraph No.6 of the grounds of detention, has stated that "there is a real possibility of the detenu coming out of bail by filing a bail application". But at that



time, the bail petition before the High Court was already pending in Crl.O.P.No.25874 of 2018,. Hence, all observations made by the detaining authority in paragraph no.6 of the order shows total non-application of mind on his part while passing the detention order. Thus, on the ground of non-application, the Order of Detention is liable to be set aside.

3. In this regard, the learned counsel relied upon a judgment of this Court in **Lakshminarayanan v. Secretary to the Government [2014(2) MLJ (Cr1) 173]**. The relevant portion from the said judgment reads as follows:

"7. From the reading of the above, it is clear that the detaining authority has mentioned that the detenu has moved a bail application in Crime No.1461 of 2013 before the Principal District and Sessions Court, Chengalpattu, in Crl.M.P.No.3237 of 2013 and the same is pending. While so, the detaining authority has arrived at subjective satisfaction that there is likelihood of the detenu coming out on bail by filing bail application for the very same Crime No.1461 of 2013. When the bail application moved by the detenu is pending before the concerned Sessions Court, it is not incumbent on the detaining authority to arrive the satisfaction that there is likelihood of the detenu coming out on bail by filing bail application, which would clearly shows the non-application of mind on the part of the detaining authority in clamping the order of detention against the detenu. In support of his contention, the learned counsel for the petitioner relied on a unreported decision of this Court in H.C.P.No.487 of 2008, dated 22.07.2008. On consideration of every material and the order in question, we have no hesitation to hold that the order was passed by the detaining authority with total non-application of mind and therefore the impugned detention order cannot be allowed to stand."

4. The said judgment is squarely applicable to the facts of the present case. Therefore, as rightly contended by the learned counsel for the petitioner, the Detaining Authority exhibited non-application of mind regarding the pendency of the bail application by making an observation that there was real possibility of the detenu coming out on bail by filing a bail application before the High Court. Hence, on the ground of non-application of mind, the subjective satisfaction expressed by the Detaining Authority is vitiated. On that ground alone, the order of detention is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 22.11.2018, made in C.O.C.No.60/2018, by the second respondent and directs the release of the detenu, by name Annadurai, son of Kathamuthu, aged about 46 years, forthwith, if his continued custody is not



authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar

// True Copy //

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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,
Tiruchirapalli.

+1cc to Mr.K.A.S.Prabhu, Advocate, SR.No.44137

H.C.P. (MD) No.1696 of 2018
01.02.2019

NBJ

KK/SAR/02.04.2019/ 3P- 5C