



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.649 of 2019

Sumathi

... Petitioner/Wife of Detenue

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in Cr.M.P.No.32 of 2019 dated 28.06.2019 in detaining the detenu under Section 2(b) of the Tamilnadu Act 14 of 1982 as a Boot-legger and quash the same and direct the respondents to produce the Detenu namely Marimuthu S/o. Athmanathan, Male, aged about 44 years, who is detained in Central Prison, Tiruchirappalli, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor

ORDER

(Order of the Court was made by **T.RAJA,J.**)

The petitioner is the wife of the detenu viz., Marimuthu, Son of Athmanathan, and challenging the legality of the impugned order of detention dated 28.06.2019, passed by the second respondent, under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders,



Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982) and branding him as 'Boot-legger' in Cr.M.P.No.32/2019, came forward to file the present Habeas Corpus Petition.

2.A perusal of the Grounds of Detention dated 28.06.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Marimuthu came to the adverse notice in the following case:-

Sl . No .	Name of the Police Station and Crime No.	Section of Law
1.	Alangudi Prohibition Enforcement Wing Cr.No.49 of 2019	U/s 4(1) (a) r/w 4(1-A) TNP Act, 1937.

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Sections 4 (1)(aaa) r/w 4(1-A) Transport TNP Act, 1937, 420, 465, 468, 471 I.P.C. and 5, 7 of TNRS Rules, 2000 in Musiri @ Thuraiyur Prohibition Enforcement Wing Crime No.402 of 2019 (ground case). The detenu was arrested on 16.06.2019 and produced before the Court of Judicial Magistrate, Manapparai on 17.06.2019 and remanded to judicial custody. 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 and public health, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

3.We have heard Mr.K.M.Karunakaran, learned counsel appearing for the petitioner and Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

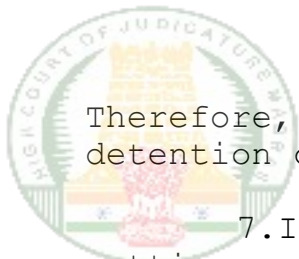
4.Learned counsel appearing for the petitioner has drawn the attention of this Court to paragraph No.5 of the grounds of detention and would submit that though the detaining authority has noted pretty well that in the ground case the detenu is in remand and he has not filed any bail petition so far, in order to derive the subjective satisfaction that there is imminent possibility of the detenu coming out on bail, which is prejudicial to the maintenance of public order and public health, no material or whatsoever has been produced by the sponsoring authority before the detaining authority and in the absence of such material the derivation of subjective satisfaction in that regard is vitiated and hence, prays for quashment of the impugned order of detention.



5. In support of his submission, the learned counsel appearing for the petitioner has relied on an unreported order of this Court **dated 03.06.2019** made in **H.C.P. (MD) No.1745 of 2018** in the matter of **Sankaramoorthy v. State of Tamil Nadu, rep. by The Principal Secretary to Government and two others**, in which one of us (B.PUGALENDHI, J) was a party. The relevant portion of the order runs thus:

"6. As rightly pointed out by the learned counsel for the petitioner, the detenu is in custody in connection with the ground case in Crime No.206 of 2018 on the file Radhapuram Police Station and he did not file any bail application in the ground case. The sponsoring authority did not produce any materials to show that there is imminent possibility of the detenu coming out on bail in the ground case. In the absence of such a vital material, by merely citing an similar order in CRMP No.2177/2018 passed by the Judicial Magistrate No.V, Tirunelveli serves no purpose. Therefore, the subjective satisfaction derived in this regard is vitiated. Therefore, this Court is of the view that on this sole ground, the detention order, impugned herein, is liable to be set aside."

6. Though we have heard the learned Additional Public Prosecutor appearing for the respondents, we are unable to find any explanation as to how the detaining authority has arrived at the subjective satisfaction that there is imminent possibility of the detenu coming out on bail, when there is no material produced by the sponsoring authority to substantiate the same. In our considered view, to reach any subjective satisfaction that there is a real possibility of release of the detenu on bail, it must be based on cogent materials and not on the mere *ipse dixit* of the detaining authority. As has been observed by the Supreme Court, the question as to whether there is possibility of being released on bail depends upon several factors, such as nature of offence, the stage of the investigation, the availability of statutory bail as envisaged under Section 167(2) proviso of Cr.P.C. Even though it is not possible nor desirable to enumerate the circumstances in which bail is likely to be granted, one can venture to say that it is very rare for a Court of law to grant bail during the pendency of the investigation when there is allegation of commission of serious offence, such as punishable under Section 302 or Section 395 I.P.C. As a matter of fact, offence under Section 302 I.P.C. cannot be characterised as an offence of routine nature which would prompt any Court to grant bail even before completion of investigation. In any event, since the detenu has not moved any bail application, there is no likelihood of the detenu coming out on bail. This has been overlooked by the detaining authority. Hence, in the absence of any material, the subjective satisfaction derived by the detaining authority that there is real possibility of the detenu coming out bail is vitiated.



Therefore, this Court is of the view that on this sole ground, the detention order, impugned herein, is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, the District Collector, Tiruchirappalli District, Tiruchirappalli in Cr.M.P.No.32/2019 dated 28.06.2019. Consequently, the detenu, namely, Marimuthu, son of Athmanathan, aged about 44 years, who is now detained at Central Prison, Tiruchirappalli is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public(Law and Order),
Fort St. George, Chennai 9

Copy to

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P(MD)No.649 of 2019

19.12.2019

MK (22.01.2020) 4P 6C

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