

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

H.C.P.No.2396 of 2019

S.Pushpa ... Petitioner/Wife of the detenue

Vs

1.State of Tamil Nadu represented
by its Secretary to Government (Home),
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling upon the entire records of the second respondent in his Proceedings D.O. No.70/2019-C2 dated 09.09.2019 passed by second respondent herein quash the same and direct the respondents to produce the body or person of the petitioner husband Sivasankar alias Sivasankaran, Aged 54 years, branded as Bootlegger and now confined in Central Prison, Vellore, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Chinnaraj

For Respondents: Mr.R.Prathap Kumar
Additional Public Prosecutor

O R D E R

[Order of this Court was made by R.SUBBIAH, J]

Petitioner is the wife of the detenu viz., Sivasankar, S/o.Govindan, aged about 54 years, who has been branded as a 'Bootlegger' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in D.O. No.70/2019-C2 dated 09.09.2019.

2. The detenu came to adverse notice in the following cases:

Sl.No.	Police Station and Crime No.	Section of Law
1.	Polur Prohibition Enforcement Wing, Crime No.45/2018	4(1)(a) TNP Act 1937
2.	Polur Prohibition Enforcement Wing, Crime No.755/2019	4(1)(a) TNP Act 1937

The alleged ground case has been registered against the detenu in Crime No.756 of 2019 on the file of Polur Prohibition Enforcement Wing for offences u/s. 4(1)(g), 4(1)(aaa) r/w 4(1-A)(ii) Tamil Nadu Prohibition Act 1937. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. Perused the materials on record.

4.Learned counsel for petitioner submits that the Detaining Authority has stated in the Arrest Memo at page No.34 of the Booklet furnished to the detenu that the arrest in respect of the above case, has been intimated to the son of the detenu namely, Sathish and an endorsement by the authorities has been made to that effect, but the detaining authority has not furnished any materials to substantiate the fact of serving the Arrest Memo on the said Sathish or any other relatives of the detenu by Thapal or Registered Post. Learned counsel informs that the same adversely has affected his right of making an effective representation.

5.It is a case, among other grounds, where the learned counsel for the petitioner would urge that the arrest of the detenu in the ground case has not been intimated to the family members or the relatives or to the known persons of the detenu as per the procedure laid down. As evidenced from the document in page 34 of the Booklet furnished to us, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to one Sathish, son of the arrested person, but no materials have been furnished to substantiate that the said intimation was sent through a Thapal or Registered post or as per the procedure laid down. This would vitiate the order of detention. For the aforesaid reasons, this Court would allow the present petition.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., Sivasankar, S/o.Govindan in D.O. No.70/2019-C2 dated 09.09.2019, is set aside. The above named detenu is

ordered to be set at liberty forthwith, unless her custody is required in connection with any other cases.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vga

To

- 1.The Secretary to Government (Home),
State of Tamil Nadu
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Thiruvannamalai District, Thiruvannamalai.
- 3.The Superintendent,
Central Prison, Vellore.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai 600 009.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2396 of 2019

NR(CO)
GMY(19/03/2020)