



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD)No.664 of 2019

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Kiruthiga : Petitioner

Vs

1.State rep. by the

The Additional Chief Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.

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

3.The Superintendent of Central Prison,
Tiruchirappalli.

: Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records of the 2nd respondent in detention order in Cr.M.P.No.28/2019 dated 23.06.2019 and setting aside the order of detention passed by the 2nd respondent herein setting the detenu by name Sivakumar S/o.Subramani at liberty now detained in Central Prison, Trichirappalli.

For Petitioner : Mr.R.Rajaraman

For Respondents : Mr.K.Dinesh Babu

Addl.Public Prosecutor

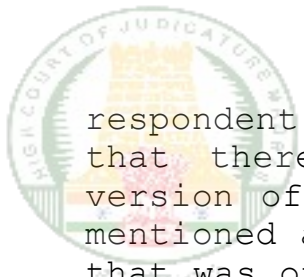
O R D E R

[Order of the Court was made by **T.RAJA, J.**]

This Habeas Corpus Petition has been filed challenging the correctness of the impugned detention order dated 23.06.2019 passed by the second respondent/District Collector and District Magistrate, Tiruchirappalli District, branding the petitioner's husband/A-2 Sivakumar as 'Sand Offender'.

2.Mr.R.Rajaraman, learned counsel for the petitioner, assailing the impugned detention order, placed before us, three-fold submissions:

<https://hcservices.ecourts.gov.in/Hcservices> District Collector and District Magistrate/second



respondent has wrongly passed his impugned detention order stating that there is serious material discrepancy. In the English version of the detention order, the name of the detenu has been mentioned as 'Sivakumar'. But, the tamil translated version shows that was only 'Prabhakaran'. Hence, it is not known whether it is Sivakumar or Prabhakaran, who drove the vehicle. It clearly shows non-application of mind. Thus, for want of subjective satisfaction, the impugned detention order is liable to be quashed.

b)Mr.Matheswaran, owner of the vehicle also after suffering from the similar detention order dated 23.06.2019, came to this Court on the ground that arrest was not communicated and there was no proof for sending SMS from the respondent side and also to show that the detenu has received the said SMS and hence, this Court allowed HCP(MD).No.662 of 2012, filed by the said Mr.Matheswaran on 20.12.2019.

c)Thirdly, in the impugned order, it is mentioned that there was a confession statement given by the detenu Sivakumar. But thereafter, a copy of the same was not furnished. The above mentioned Matheswaran has also taken a ground that the impugned detention order cannot be sustained for the reason that the statement given by the detenu Sivakumar was not enclosed. It was also canvassed that in the FIR registered against the detenu, it was mentioned that there are two vehicles bearing Regn.Nos.TN-49-Y-6147 and TN-28-P-9655 involved in smuggling the sand. But, the seizure mahazar shows that only one lorry bearing regn No.TN-28-P-9655 involved in smuggling. It also reflects non-application of mind. It also clearly shows that there is want of subjective satisfaction on the part of the Detaining Authority, while passing the impugned order. For all these reasons, he prayed for allowing the petition by quashing the impugned order.

3.A detailed counter affidavit has been filed by the second respondent, in which, it is also stated that Mr.Matheswaran filed H.C.P.(MD).No.662 of 2012 and the same has been allowed on the sole ground that SMS communication was not given to his family members. On that score, that HCP was allowed.

4.Learned Additional Public Prosecutor again pleaded that although the F.I.R mentioned about the involvement of two vehicles bearing Regn.Nos. TN-49-Y-6147 and TN-28-P-9655, finally, the lorry driven by the detenu Sivakumar was alone captured from the place of occurrence. Therefore, the impugned detention has been passed by following the due process of law. When a query was raised by this Court, whether the detenu Sivakumar or Prabhakaran has involved in smuggling, we are unable to get any plausible answer. In the counter affidavit also, it is not mentioned



whether it is Prabhakaran or Sivakumar who drove the vehicle. To enlighten the material discrepancy, it is necessary to extract the relevant portion of the detention order passed in English as well as in Tamil.

"Later the accused Sivakumar geared the vehicle and attempted to dash on them."

"மின்னர், எதிரி பிரபாகரன் வாகனத்தை இயக்கி அவர்கள் மீது மோத முயன்றார்".

5.A perusal of the above English version as well as Tamil version of the detention order clearly shows that the Detaining Authority has not applied his mind. Therefore, it is difficult to find out whether it was Sivakumar/detenu herein or Prabhakaran/A-3 who drove the vehicle and tried to strike against the Officials. Further, H.C.P.(MD).No.662 of 2012 filed by Mr.Matheswaran/owner of the vehicle involved in smuggling was allowed on the sole ground that SMS communication was not given to his family members. Therefore, the claim of the petitioner that there was no proper application of mind in passing the detention order is accepted and the impugned order is liable to be quashed.

6.For all the reasons above mentioned, the impugned detention order passed by the second respondent in Cr.M.P.No.28/2019 dated 23.06.2019 is set aside and this petition is allowed and the detenu Sivakumar S/o.Subramani, aged about 28 years, now detained at Central Prison, Tiruchirappalli is set at liberty. The Superintendent of Central Prison, Tiruchirappalli/third respondent is directed to release him forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vs

To

1.The Additional Chief Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.

<https://hcservices.ecourts.gov.in/hcservices/>



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

3.The Superintendent of Central Prison,
Tiruchirappalli.

4.The Joint Secretary to Government
Public(Law and Order)
Fort St. George,
Chennai-09.

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

+1 CC to MR.R.RAJARAMAN, Advocate (SR-32[F] dated 02/01/2020)

H.C.P. (MD) No.664 of 2019
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