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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD)No.1083 of 2019

Muniyasamy, S/o.Chellaiah Thevar

... Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the entire records, connected with the detention order of the Respondent No.2 in No.60/BCDFGISSSV/2019, dated 11.09.2019, quash the same and direct the respondents to produce the body or person of the detenu by name Santhanam, son of Muniyasamy, aged about 30 years, now detained as "Bootlegger" at Madurai Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz. Santhanam and challenging the legality of the impugned order of detention dated 11.09.2019, 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 'Bootlegger' in No.60/BCDFGISSSV/2019, came forward to file the present Habeas Corpus Petition.

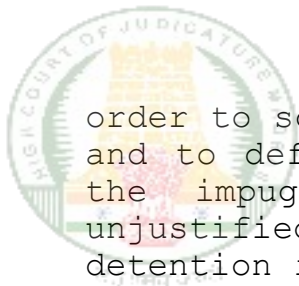
2.A perusal of the Grounds of Detention dated 11.09.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz., Santhanam was involved in the following cases:-

Sl. Nos	Name of the Police Station and Crime No.	Section of Law
1.	Madurai City, Prohibition Enforcement Wing Cr.No.544 of 2019	U/s. 4(1)(aaa), 4(1-A), 18-A of the Tamil Nadu Prohibition Act and Transport Act
2.	Madurai City, Prohibition Enforcement Wing Cr.No.560/2019	U/s. 4(1)(a), 4(1)(i), 4(1-A)(1) and 18-A of the Tamil Nadu Prohibition Act and Transport Act
3.	<u>Ground case:-</u> Madurai City, Prohibition Enforcement Wing Crime No.568/2019	U/s. 4(1)(aaa), 4(1-A) and 18-A of the Tamil Nadu Prohibition Act and Transport Act

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.R.Alagumani, 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 the detenu Santhanam has been granted conditional bail in the first and second adverse cases in Madurai City Prohibition Enforcement Wing Crime Nos.544 and 560 of 2019 by the learned Judicial Magistrate No.VI, Madurai, in Cr.M.P.Nos.2529 and 2530 of 2019, on 07.09.2019 and in the ground case in Madurai City Prohibition Enforcement Wing Crime No.568 of 2019 by the learned Judicial Magistrate No.IV, Madurai, in Cr.M.P.No.3952 of 2019, on 09.09.2019 and he is still in remand in the said case, as he has not produced the required sureties before the Courts concerned as ordered in the bail orders. However, in



order to scuttle the grant of bail by the Judicial Magistrate Courts and to defeat the order passed by the Judicial Magistrate Courts, the impugned order of detention has been passed, which is unjustified and impermissible in law, hence, the impugned order of detention is liable to be quashed.

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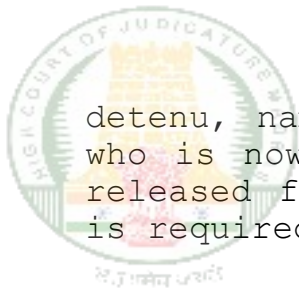
5. In support of his submission, the learned counsel appearing for the petitioner has relied upon an unreported decision of this Court ***dated 05.07.2018*** made in ***H.C.P. (MD) No.948 of 2018*** in the matter of ***Selvakumar v. The Secretary to Government, State of Tamil Nadu and two others***. The relevant portion of the order runs thus:

'3. The order of detention reflects a most blatant attempt to scuttle the grant of bail by this Court to the detenu and defeat the order passed by this Court. The detention order dated 27.06.2018 informs that the detenu has been granted bail on the very same date under orders in CrI.O.P.(MD) No.9959 of 2018, on 27.06.2018 and thereafter proceeds to state that the detenu has not produced sureties, as ordered by this Court.

4. We fail to understand how the Detaining Authority can insist that the detenu to produce the sureties on the very date of the order of bail granted by this Court and how not doing so can be stated as a reason informing likelihood of the detenu being released on bail and therefore need for his detention.'

6. The learned Additional Public Prosecutor appearing for the respondents after going through the order passed by this Court in ***H.C.P. (MD) No.948 of 2018, dated 05.07.2018*** in ***Selvakumar's*** case, is unable to sustain the impugned order of detention. We are also in full agreement with the contention placed before us that when the learned Judicial Magistrate No.VI, Madurai, has granted bail in both the adverse cases in Cr.M.P.Nos.2529 and 2530 of 2019, on 07.09.2019 and the learned Judicial Magistrate No.IV (FAC), Madurai, has granted bail in the ground case in Cr.M.P.No.3952 of 2019 on 09.09.2019, passing of the impugned detention order within two days after grant of bail in the ground case for the reason that the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to maintenance of public order and public health would show that the impugned order of detention is an attempt to scuttle the grant of bail by the Courts below and to defeat the order of the Courts and as such, on the said ground, the impugned order of detention 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 Commissioner of Police, Madurai City, Madurai, in No.60/BCDFGISSSV/2019, dated 11.09.2019. Consequently, the



detenu, namely, Santhanam, son of Muniyasamy, aged about 30 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

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Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Joint Secretary to Government,
Public(Law&Order),
Fort st. George, Chennai 9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD)No.1083 of 2019

27.02.2020

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