

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.3.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

Habeas Corpus Petition No.1286 of 2006

Mrs.Vasantha

... Petitioner

...vs...

1.The Secretary to Government
Prohibition and Excise Department
Government of Tamil Nadu
Fort St.George
Chennai 600 009

2.The District Magistrate
and District Collector
Vellore District
Vellore

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the records relating to the detention order No.C3.D.O.No.130/2006 dated 29.11.2006 passed by the second Respondent and set aside the same and direct the respondents to produce the body of the detenu by name Thiru Balasundaram, S/o Sagadevan, aged about 50 years, the detenu now confined in Central Prison, Vellore before this Hon'ble Court and set him at liberty forthwith.

For petitioner : Mr.A.K.S.Thahir

For respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard the learned counsel appearing for the parties.

2. The order of detention on the allegation that the detenu is a 'Bootlegger' is in question.

3. The detaining authority in paragraph 5 of the grounds of detention has observed as follows:

"5.I am aware that Thiru.Balasundaram is in remand in Arcot Taluk Police Station Crime No.275/2006 u/s 4(1)(i), 4(1)(aaa), 4(1-A)(ii) Tamil Nadu Prohibition Act r/w 328 IPC and he has moved the bail application in CrI.M.P.No.9342/2006 before the Sessions Court, Vellore and the same was dismissed on 7.11.2006. Further I am also aware that a bail application was moved before the Hon'ble High Court, Chennai in CrI.O.P.No.29332/2006 and is pending. However there is most likely that he may come out on bail for the above case, since in similar cases, bails are granted by the High Court after lapse of time."

4. The learned counsel appearing for the petitioner has submitted that in fact the bail application of the accused/detenu was rejected by the High Court on 27.11.2006 and yet the aforesaid aspect was never brought to the notice of the detaining authority. It is therefore contended that the detaining authority mechanically passed the order without proper satisfaction regarding the possibility of the detenu coming out of bail by taking into account the relevant facts, particularly, the fact that the bail application of the accused/detenu had been rejected by the High Court. In support of his contention, the learned counsel for the petitioner relied upon the decision rendered in KUPPUSWAMY,C v. SECRETARY TO GOVERNMENT (2005 M.L.J.(CrI.)891). The ratio of the said decision is squarely applicable to the present case.

5. Hence, the Habeas Corpus Petition is allowed. Impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary to Government
Prohibition and Excise Department
Government of Tamil Nadu
Fort St.George
Chennai 600 009

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

3. The Superintendent,
Central Prison, Vellore.

4. The Joint Secretary to Government,
Public (Law & Order)

5. The Public Prosecutor,
High Court, Madras.

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H.C.P.No.1286/2006

KLT(CO)
RVL 03.05.2007