

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2016

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THE HON'BLE MR.JUSTICE G.CHOCKALINGAM  
and  
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.281 of 2016

M.Jeevitha ... Petitioner/Daughter of the  
Detenue

Vs.

1. State rep.by  
Secretary to Government,  
Home, Prohibition and Excise Department  
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate  
Kancheepuram District  
Kancheepuram ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records in BCDFGISSSV No.9 of 2016 passed by the second respondent on 07.02.2016 set aside the same and direct the respondents to produce the detenue MUTHULAKSHMI W/o. Mariappan, 45 years, who is now detained in Special Prison for Women, Puzhal, Chennai -66 before this Court and set her at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

For Respondents : Mr.M.Maharaja  
Additional Public Prosecutor

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O R D E R  
[Order of the Court was made by G.CHOCKALINGAM, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in B.C.D.F.G.I.S.S.S.V No.09 of 2016 dated 07.02.2016, whereby the detenue/mother of the petitioner, by name, MUTHULAKSHMI W/o Mariappan, aged 45 years, was ordered to be detained under the provisions of the 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) branding her as a "Bootlegger".

2. Though many grounds have been raised in the petition, Mr.S.Swamidoss Manokaran, learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3. Learned counsel appearing for the petitioner submitted that the detenu has been remanded to judicial custody in the adverse cases in Cr.Nos.350/2015 and 475/2015 registered by the Mamallapuram @ Thirukalukundram Police Station and though a mention has been made by the Detaining Authority in respect of the ground case in paragraph 5 of the Grounds of Detention, the factum of the remand of the detenu in the 2nd and 4th adverse cases in Cr.No.350 of 2015 and 475 of 2015 has not been reflected. This is indicative of the non-application of mind on the part of the Detaining Authority and hence, submitted that the detention order is vitiated and the same is liable to be quashed.

4. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5. We have heard the learned counsel for both sides with regard to the facts.

6. As could be evidenced from the Grounds of Detention, the detenu was arrested in the adverse cases in Cr.Nos.350 of 2015 and 475 of 2015. But the factum of remand of the detenu in the 2nd and 4th adverse cases in Cr.Nos. 350 of 2015 and 475 of 2015 has not been reflected in paragraph 5 of the Grounds of Detention. When nothing has been stated about the remand of the detenu in the said adverse cases, it is not known whether the detenu has filed any bail application in the said adverse cases or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse cases. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

7. It is trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of

Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

8. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detainee is directed to be released, forthwith, unless her presence is required in connection with any other case.

Sd/-  
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Secretary,  
State of Tamil Nadu  
Department of Home, Prohibition and Excise Department  
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate  
Kancheepuram District  
Kancheepuram.
3. The Superintendent of Police,  
Special Prison for Women, Puzhal.
4. The Joint Secretary to Government,  
Public(Law & Order),  
Fort Saint George, Chennai - 9.
5. The Additional Public Prosecutor  
High Court, Madras.

H.C.P.No.281 of 2016

GJ II(CO)  
CA(15/06/2016)