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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2016

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN  
AND  
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P.(MD)No.1450 of 2016

R.Amaravathi : Petitioner  
Vs.

1.State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Government of Tamil Nadu,  
Home, Prohibition & Excise Department,  
Chennai-9.

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

3.The Superintendent,  
Special Prison for Women,  
Madurai.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the records pertaining to the proceedings of the second respondent made in his proceedings Detention Order No.14/2016, dated 21.09.2016, and quash the same and set the petitioner's mother, by name "Lakshmi, W/o.(Late) Mayee, aged about 61 years", at liberty from Special Prison for Women, Madurai.

For Petitioner : Mr.M.Jegadeesh Pandian  
For Respondents : Mr.C.Mayilvahana Rajendran,  
Additional Public Prosecutor

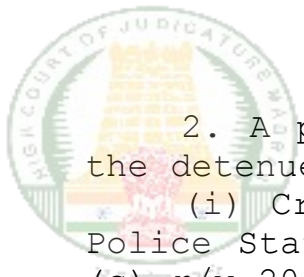
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ORDER

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(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioner is the daughter of the detenie, namely Tmt.Lakshmi, W/o.(Late) Mayee, aged about 61 years, and the detenie was branded as a "drug offender" and detained vide <https://hcmr.judges.gov.in/cases> dated 21.09.2016, in Detention Order No.14/2016, by the second respondent. Challenging the legality of the same, the present Habeas Corpus Petition is filed.



2. A perusal of the grounds of detention would disclose that the detinue came to adverse notice in the following cases:

(i) Crime No.716 of 2015 registered on the file of Thenkarai Police Station, for the commission of the offence under Section 8 (c) r/w 20(b)(ii)(B) of NDPS Act, for the occurrence took place on 02.11.2015 at about 06.00 hours.

(ii) Crime No.324 of 2016 registered on the file of Thenkarai Police Station for the commission of the offence under Section 8 (c) r/w 20(b)(ii)(A) of NDPS Act, for the occurrence took place on 02.07.2016 at 14.30 hours.

3. The grounds of detention would further read that on 26.08.2016 at about 14.00 hours, on the basis of secret information, the Inspector of Police, Thenkarai Police Station and the police party were mounting surveillance and they saw one person coming having a pocket in her hand and on account of suspicious movements, she was intercepted and searched after informing her about her legal right to be examined before the Judicial Magistrate or before any Government Gazette Officer and she has stated that the police party herself can search her. The search has revealed that she was found in possession of Ganja in the form of green coloured leaves and seeds and it was weighing about 1.250 Kilograms of Ganja. Chemical Analysis Report also revealed that it is a Narcotic substance. In this regard, a case in Crime No.397 of 2016 was registered by the Thenkarai Police Station for the commission of the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act (ground case).

4. The detinue was produced before the Court of Judicial Magistrate, Periyakulam and was remanded to judicial custody till 09.09.2016 and it was subsequently extended upto 23.09.2016. The Detaining Authority, on satisfaction of the materials placed before it that the activities of the detinue is prejudicial to the maintenance of public order and public health, has clamped the order of detention. Challenging the same, the present Habeas Corpus Petition is filed.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to booklet and would submit that in all three cases, admittedly, the alleged contraband were seized and later on only, she was brought to Thenkarai Police Station and a case was registered. However, in the seizure mahazar, crime numbers appear and, therefore, the case projected by the prosecution is per se false and the Detaining Authority has also not duly applied its mind to the said material infirmity and prays for quashing of the order of detention.

6. Per contra, Mr.C.Mayilvahana Rajendran, learned Additional Sessions Judge, Periyakulam would submit that all the points urged by the petitioner can be adjudicated only during the course of trial and prays for dismissal of the Habeas Corpus Petition.



7. This Court considered the rival submissions and also perused the materials placed before it.

8. A perusal of the booklet would disclose that admittedly, all the three cases came to be registered at a later point of time. However, in the seizure mahazar, crime numbers appear. The Detaining Authority ought to have sought a clarification from the Sponsoring Authority as to the said infirmity, but, he has failed to do so. In the considered opinion of the Court, the said infirmity vitiates the order of detention.

9. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order No.14/2016, dated 21.09.2016, is quashed. The detainee, namely, Lakshmi, W/o.(Late) Mayee, aged about 61 years, is ordered to be set at liberty forthwith, if her detention is not required in connection with any other case.

Sd/  
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar.

To

1.The Secretary to Government,  
State of Tamil Nadu,  
Government of Tamil Nadu,  
Home, Prohibition & Excise Department,  
Chennai-9.

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

3.The Superintendent,  
Special Prison for Women,  
Madurai.

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

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

+1CC to M/S.M.Jegadeesh Pandian, Advocate, SR.No.79422

Order made in  
H.C.P.(MD) No.1450 of 2016

Dated: 01.12.2016