



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.04.2018**

CORAM:

**THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED**

H.C.P.(MD)No.357 of 2018

Azhagarsamy

... Petitioner

Vs.

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
 2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram District.
 3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- ... Respondents

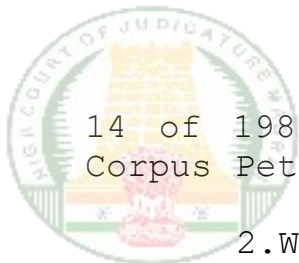
PRAYER: This petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records, connected with the detention order of the Respondent No.2 in No. Cr.M.P.No.12/D.O/2018, dated 02.03.2018 and quash the same and direct the Respondents to produce the body or person of the detenu by name Azhagarsamy, son of Govindaraj, aged about 32 years, now detained at Madurai Central Prison before this Hon'ble Court and set him at liberty forthwith.

For Petitioner	: Mr.R.Alagumani
For Respondents	: Mr.V.Neelakandan
	Additional Public Prosecutor.

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

The petitioner is the detenu viz., Azhagarsamy S/o. Govindaraj, aged about 32 years. The detenu has been detained by order in Cr.M.P.No.12/D.O/2018, dated 02.03.2018, holding him to be a "Drug Offender", as contemplated under 2(e) of Tamil Nadu Act



14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, 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.

4. A perusal of the Grounds of Detention would reveal that the ground case came to be registered against the detenu in Cr.No.48 of 2018 for the offence u/s. 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985. A bail application have been moved on behalf of the detenu in the ground case in Cr.M.P.No.423 of 2018 and is pending before learned Additional District and Sessions Judge, Special Court for Essential Commodities and NDPS Act Cases, Pudukkottai. Though the detaining authority has made reliance on similar case in which an accused was granted bail, the facts involved in that case are different. The principle of similarity cannot be applied mechanically. Normally, bails are granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detenu coming out on bail and the said order was passed without application of mind. Therefore, we are of the view that the finding of the Detaining Authority that there is likelihood of the detenu coming out on bail, is nothing but a clear non-application of mind and the Detaining Authority has not passed the order on merits; but passed, based on mere *ipse dixit*. Hence, on the above ground, the detention order is liable to be set aside.

5. In the result, the Detention Order, passed by the second respondent, in his proceedings in Cr.M.P.No.12/D.O/2018, dated 02.03.2018, is quashed. The detenu, namely, Azhagarsamy, son of Govindaraj, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

6. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To

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

+1cc to Mr.R.Alagumani, Advocate Sr.No.63747

Sj

MK/SV MMS/SAR 1/18.06.2018/3P/7C

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