



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.138 of 2020

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Shanmugathai (F, 55/20)

... Petitioner/Mother of the Detenu

-vs-

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

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

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order of the respondent No.2 in No.1/BCDFGISSSV/2020 dated 04.02.2020 and quash the same and direct the respondents to produce the detenu by name, Shanmugavel son of Subbaiah Thevar, Male, aged about 33 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

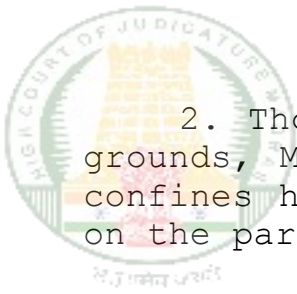
For Petitioner : Mr.R.Vinoth Bharthi

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The mother of the detenu, namely Shanmugavel, son of Subbaiah Thevar, aged about 33 years has come forward with this Habeas Corpus Petition questioning the detention order passed by the second respondent dated 04.02.2020 made in No.1/BCDFGISSSV/2020, wherein the detenu has been branded as "Drug Offender", as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982.



2. Though the detention order has been challenged on several grounds, Mr.R.Vinoth Bharathi, learned counsel for the petitioner confines his arguments with regard to the non-application of mind on the part of the detaining authority.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents, while reiterating the counter affidavit filed by the second respondent, contended that the detention order has been rightly passed by the second respondent considering the antecedents of the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4. We have heard the rival submissions and perused the materials available on records.

5. In the matter on hand, perusal of the detention order shows that the detenu has involved in two adverse cases apart from the ground case. The detaining authority to arrive at subjective satisfaction has relied on the bail order granted in the first adverse case. A perusal of the bail order shows that the detenu was granted bail, since he was not having any previous case. The learned counsel by relying upon the order passed in HCP(MD)No.719 of 2019 dated 16.03.2020 would argue that on the same ground, this Court has quashed the detention order, wherein at paragraph 4, it has been held as follows:-

"4.As rightly contended by the learned counsel for the petitioner, the petitioner does have one previous case to his credit, viz., Thoothukudi Narcotic Intelligence Bureau Crime No.59 of 2018 (adverse case) and viewed from that angle, the Detaining Authority is wrong in arriving at subjective satisfaction that the detenu will be enlarged on bail in the ground case, relying upon the bail granted in the adverse case, viz., Thoothukudi Narcotic Intelligence Bureau Crime No.59 of 2018. This subjective satisfaction arrived at by the Detaining Authority, in the opinion of this Court, suffers the vice of non-application of mind and accordingly, the Detention Order is liable to be quashed."

6. In the light of the above fact, we are convinced that the order impugned in this habeas corpus petition is liable to be set aside. Accordingly, the order of detention passed by the second respondent, in No.1/BCDFGISSSV/2020, dated 04.02.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Shanmugavel, son of Subbaiah Thevar, male aged about 33 years now detained at Palayamkottai Central Prison is



directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (AS)

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// True Copy //

/ /2020

Sub Assistant Registrar (CS)

skn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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

H.C.P. (MD) No.138 of 2020

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