



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2020

CORAM

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

W.P. (MD) No. 6906 of 2020

R. Sasikani

... Petitioner

Vs.

1. The District Collector,
Theni District.

2. The Superintendent of Police,
Theni District.

3. The Inspector of Police,
Cumbum North Police Station,
Theni District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus by directing the respondents 1 & 2 to consider and dispose of the petitioner's representation dated 15.06.2020 sent in connection with the case of the petitioner's husband, by name, Rathinam @ Rathinakumar, S/o. Rasu Thevar in the light of the law laid down by this Hon'ble Court in T.M. Syed Ali v. State of Tamil Nadu, reported in 1999 (2) CTC 490 and Mayilvanam v. The Secretariat to the Government in H.C.P. (MD) No. 1555 of 2015, dated 07.12.2015, within a stipulated time limit as prescribed by this Hon'ble Court.

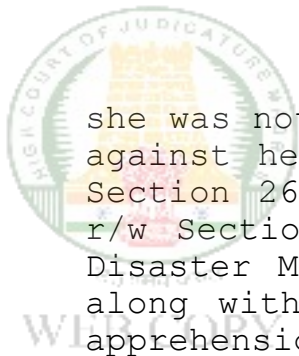
For Petitioner : Mr. R. Anand

For Respondents : Mr. K. K. Ramakrishnan,
Additional Public Prosecutor

O R D E R

This writ petition is filed by the wife of the accused, namely, Rathinam @ Rathinakumar for a Writ of Mandamus for issuing a direction to the respondents 1 & 2 to consider her representation dated 15.06.2020 sent in connection with her husband Rathinam @ Rathinakumar, in the light of the law laid down by this Court in T.M. Syed Ali v. State of Tamil Nadu, reported in 1999 (2) CTC 490 and Mayilvanam v. The Secretariat to the Government in H.C.P. (MD) No. 1555 of 2015, dated 07.12.2015, within a stipulated time limit.

2. The case of the petitioner is that on 30.05.2020, the third respondent and his team came to her house and forcibly taken the custody of her husband and demanded money for releasing him. Since



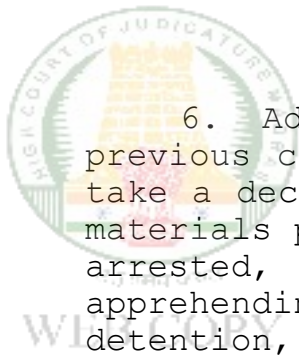
she was not able to make the payment, they have foisted a false case against her husband in Crime No.834 of 2020 for the offence under Section 269 IPC r/w Sections 20(b)(ii)(B), 29(1) & 25 of NDPS Act r/w Section 3 of the Epidemic Act, 1897 and Section 51(b) of the Disaster Management Act, 2005, that her husband Rathinam was found along with one Selvaraj in possession of 2.100 kgs of Ganja. The apprehension of the petitioner is that, since her husband was already roped-in in other cases, the third respondent is taking steps to forward the case of her husband for the purpose of detaining him under Act 14 of 1982. She gave a representation to the respondents 1 & 2 in this regard on 15.06.2020 and approached this Court on 17.06.2020 for the relief stated supra.

3. Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, takes notice for the respondents and on instructions, would submit that the petitioner's husband Rathinam is involved in the following cases:

S.No.	Station	Crime No.	Section of Law
1	Cumbum North PS	534/20	8(c) r/w 20(b)ii(B), 25 NDPS Act
2	Cumbum North PS	698/20	8(c) r/w 20(b)ii(B), 25 NDPS Act
3	Cumbum North PS	445/04	379 IPC
4	Cumbum North PS	103/03	457, 380 IPC
5	Cumbum North PS	38/03	379 IPC
6	Cumbum North PS	244/14	457, 380 IPC
7	Cumbum North PS	343/14	7(1)(A) CLA Act
8	Cumbum North PS	70/13	294(b), 323, 506(ii) IPC
9	Cumbum North PS	834/20	8(c) r/w 20(b)ii(B), 25, 29(1) NDPS Act

4. The learned Additional Public Prosecutor further submits that the consideration of any representation at its pre-execution stage cannot be maintained. In this regard, he relied upon the order passed by this Court in **W.P.No.12058 of 2012, dated 05.06.2020**, in the case of **Srilekha v. State of Tamil Nadu**, wherein, this Court dismissed the plea that at the stage of any proposal being sent by the authority, the writ petition cannot be entertained. The Court further held that the detention order is in the ultimate satisfaction of the detaining authority and it is for him to apply his mind with all the relevant materials and facts placed before him and thereafter, pass the order. Therefore, this Court cannot, at this stage, interfere with any decision being taken by the authority, on the basis of any unsubstantiated averments made by the petitioner.

5. Heard the learned Counsel appearing on either side and perused the documents placed on record.



6. Admittedly, the petitioner's husband is involved in 9 previous cases and it is always open to the detaining authority to take a decision for detaining the petitioner's husband based on the materials placed before him. Since the petitioner's husband has been arrested, knowing that her husband is involved in 9 other cases, apprehending that her husband would be foisted with an order of detention, the petitioner made such a bald allegation as against the officer, who registered the case against her husband that he demanded a sum of Rs.1,00,000/- for releasing her husband and since she did not make the payment, as demanded, the case has been foisted.

7. As has been held by this Court in **Srilekha's** case (supra), this Court cannot issue a direction at the pre-execution stage, based on the unsubstantiated averments made by the petitioner. The detention order is on the satisfaction of the detaining authority on the materials placed and there shall not be a direction, as prayed for, for considering the representation.

8. In yet another decision, in **W.P.No.22920 of 2014, dated 09.04.2015**, in the case of **Amutha v. State of Tamil Nadu**, this Court, after elaborate discussions, has held as follows:

"20. From the above decisions, it is clear (i) that this Court has jurisdiction to entertain a challenge to an order of preventive detention, even at the pre-execution stage, and (ii) that however, this Court will exercise a lot of restraint, imposed upon itself, before invoking its power at the pre-execution stage.

21. But, unfortunately for the petitioner, even the stage at which this Court can examine the issue, has not arisen. The petitioner has come, not at the pre-execution stage, but at a stage when no order has been passed. He has actually come at the pre-conception stage and not at the pre-execution stage. No Court, including the Supreme Court, has so far recognised the power of this Court to examine the validity of a decision which is only in the mind of the detaining authority and which is yet to find a shape in the form of a written order. After all, before an order of preventive detention is passed, the competent authority has to take into account several things. The counter affidavit of the third respondent shows that he has merely made a recommendation to the competent authority. Even before the competent authority could look into it, the petitioner has come up. The jurisdiction of this Court cannot be so enlarged as to take a CT scan of the brain of the competent authority and find out whether the decision he may possibly take would be right or wrong. Therefore, I am of the considered view that the writ petition cannot be entertained at this stage. Hence, the writ petition is dismissed. There



will be no order as to costs. Consequently, M.P.Nos.1 and 2 of 2014 are closed."

9. In the decisions relied upon by the learned Counsel for the petitioner in **T.M.Syed Ali v. State of Tamil Nadu**, reported in **1999 (2) CTC 490** and in **Mayilvanam v. The Secretary to the Government** in **H.C.P. (MD) No. 1555 of 2015, dated 07.12.2015**, an order of detention has been passed by the competent authority and the same was questioned therein. Therefore, the ratio laid down in the decisions relied upon by the petitioner cannot be equated to the present case on hand.

10. Since the authority has yet to pass any order, detaining the petitioner's husband, the decisions in **Srilekha's** case (supra) and **Amutha's** case (supra) squarely apply to the present case on hand, as such, the prayer, as sought for by the petitioner, cannot be granted at this stage.

In fine, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

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 District Collector,
Theni District.
- 2.The Superintendent of Police,
Theni District.
- 3.The Inspector of Police,
Cumbum North Police Station,
Theni District.

W.P. (MD) No. 6906 of 2020

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AP (03/07/2020) 4P 4C

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