



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **02.01.2020**
CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD)No.613 of 2019

S.Esakki Thai ... Petitioner/Mother of the Detenu
Vs.

1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.

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

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

... Respondents

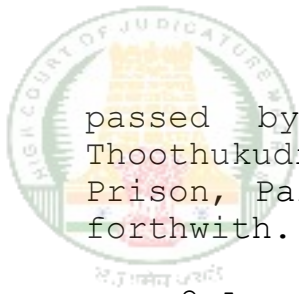
Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in H.S.(M) Confdl No.32/2019, dated 19.06.2019, quash the same and direct the respondents to produce the detenu or body of the detenu, namely, petitioner's son Ramasubramanian, aged about 40 years, S/o.Sudalaimuthu, (now confined at Central Prison, Palayamkottai) before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

[Order of the Court was made by **T.RAJA, J.**]

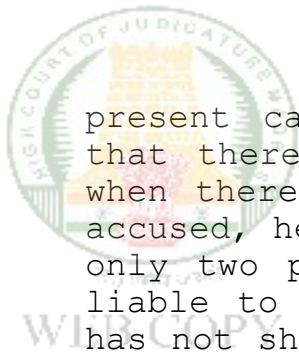
S.Esakki Thai, mother of the detenu namely, Ramasubramanian, aged about 40 years, has come to this Court, assailing the correctness of the impugned order of detention, dated 19.06.2019,



passed by the District Collector and District Magistrate, Thoothukudi, detaining the detenu Ramasubramanian at the Central Prison, Palayamkottai, to produce the detenu and set him at liberty forthwith.

2.A peculiar ground has been taken by the learned counsel appearing for the petitioner seeking to quash the impugned detention order on the premise that when there is only one ground case relating to the offences under Sections 341, 294(b), 302, 506(ii) @ 147, 148, 120(b), 341, 294(b), 302 and 506(ii) IPC and when there are five accused involved therein, the District Collector and the District Magistrate, Thoothukudi District, second respondent herein, arbitrarily exercising the power under 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), and picking up only two accused, have wrongly chose to pass the detention order. Further, the learned counsel appearing for the petitioner emphatically would submit that when there is a dispute between the individuals where there is no disturbance to the public peace, the second respondent while passing the impugned detention order has not arrived at subjective satisfaction, therefore, on this score, the impugned detention order is liable to be set aside. Again, assailing the impugned detention order, the learned counsel appearing for the petitioner, who demonstrated that the second respondent has not arrived at subjective satisfaction, argued that when there is no adverse case against the detenu, the detaining authority in Paragraph No.4 of the grounds of detention, wrongly mentioned that in the adverse case and also in the ground case, more than one person has been affected by the acts of the detenu Ramasubramanian that clearly shows that the second respondent while passing the impugned detention order has not applied his mind, that also vitiates the impugned order of detention. On this score also, the petition filed to quash the impugned detention order deserves to be allowed by quashing the impugned detention order.

3.In support of his submission, the learned counsel appearing for the petitioner has produced an unreported order of this Court made in **H.C.P.No.597 of 2019, dated 19.06.2019 [Rani Vs. State of Tamil Nadu, Rep. by the Secretary to Government, Home, Prohibition and Excise Department, Chennai and another]** to show that in a similar case, when the detention order was passed against the detenu on the basis of sole ground case, this Court while considering the correctness of the detention order passed by the authorities on the basis of sole ground case, came down heavily against the detaining authority that when the dispute has arisen between the individuals, there is no question of disturbance to the public peace warranting necessity to pass the impugned detention order. On this score, it was held that such an order is liable to be set aside. In the



present case also, the detaining authority has wrongly mentioned that there are adverse cases and ground case faced by the detenu when there is no adverse case against him and when there are five accused, he chose to pass the impugned detention order in respect of only two persons including the petitioner's son, therefore, it is liable to be set aside on the ground that the detaining authority has not shown his subjective satisfaction and by wrongly exercising the arbitrary power under 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), applying the pick and choose policy against only two persons when are five accused involved in the abovesaid IPC offences and finally, for non-application of mind passed the impugned detention order on the wrong premise that there is a adverse case against the detenu, therefore, the learned counsel prayed for allowing this Habeas Corpus Petition.

4.A counter affidavit has been filed by the second respondent. The learned Additional Public Prosecutor appearing for the respondents was unable to support the impugned detention order, more particularly, there is no answer as to why the second respondent has chosen only two persons when there are five accused involved in the IPC offences mentioned above in Crime No.12 of 2019 under Sections 341, 294(b), 302, 506(ii) IPC @ 147, 148, 120(b), 341, 294(b), 302 and 506(ii) IPC. Secondly, when there is only one ground case, Paragraph 4 of the impugned detention order shows that there is adverse case faced by the detenu. The counter affidavit also has not explained as to why in Paragraph 4 of the grounds of detention, the adverse case has been mentioned, when it is an admitted case that the detenu has faced only one ground case and he has not involved in any adverse case. The reason stated in Paragraph 4 of the grounds of detention is not only untenable and unsustainable, but also is absurd, therefore, on the ground of want of subjective satisfaction the detention order stands vitiated, hence, the impugned detention order is liable to be set aside. Secondly, as we highlighted above, only two detenus have been chosen for facing the detention order. No explanation whatsoever has been offered for picking and choosing only two persons when there are five persons were involved, therefore, on the ground that the second respondent has arbitrarily exercised his power, the same is liable to be quashed.

5.In the result, this Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent herein, namely, the District Collector and District Magistrate, Thoothukudi District, in No.H.S.(M)/Confdl No.32/2019, dated 19.06.2019. Consequently, the detenu, namely, Ramasubramanian, son of Sudalaimuthu, aged about 40 years, who is now detained at Central Prison, Karaikal, is directed to be released forthwith unless



his presence or custody or detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To

- 1.The Principal Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No. 613 of 2019
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MK (14.02.2020) 4P 5C