



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD) No.808 of 2019

P.Murugesan

... Petitioner

versus

1. The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.

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

3. The Superintendent,
Central Prison,
Madurai District.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, to call for the records pertaining to the impugned proceedings of the 2nd respondent made in BCDFGISSSV No.14/2019 dated 18.03.2019 and subsequently, quash the same as devoid of merits and consequently, direct the detenu, viz., Naveen Kumar, 25 years, son of P.Murugesan, now detained at Central Prison, Madurai, and set him at liberty forthwith.

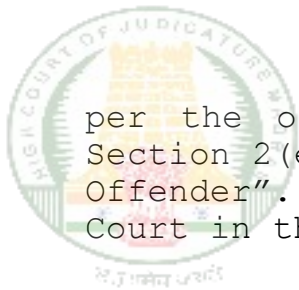
For Petitioner : Mr.J.Sankara Pandian

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

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

The petitioner herein is the father of the detenu, viz., Naveenkumar, aged about 25 years. The detenu has been detained, as
<https://hcservices.ecourts.gov.in/hcservices/>



per the order of the second respondent, dated 18.03.2019, under Section 2(e) of the Tamil Nadu Act 14 of 1982, branding him as "Drug Offender". Challenging the same, the petititioner is before this Court in this Habeas Corpus Petition.

2. Learned counsel appearing for the petitioner has assailed the correctness of the impugned detention order on four grounds. Firstly, it was pleaded that when the detenu was arrested on 06.02.2019, the second respondent, without any subjective satisfaction or basis or good grounds to detain the detenu, under the Act 14 of 1982, has wrongly passed the impugned detention order on 18.03.2019. Secondly, when the detenu has not involved in any similar type of cases till the detention order was passed, the ground taken by the second respondent in para-4 of the impugned detention order was that the second respondent is satisfied for the reason that the detenu is engaged habitually in possession and sale of intoxication drugs and thereby committing offence and he is also acting in a manner prejudicial to the maintenance of Public Order and Public Health, therefore, he is termed as a "Drug Offender" under Section 2(e) of the Tamil Nadu Act 14 of 1982, which is a clear reflection of want of subjective satisfaction. Thirdly, it was pleaded that when the counter affidavit filed by the respondent does not mention anywhere that the detenu has involved in the sale of intoxication of drugs or in possession of any substance to say that he is a drug offender, the ground of detention that he is a habitual offender, is liable to be quashed, because he is not a habitual offender.

2.1. Learned counsel for the petitioner invited our attention to Section 2 (viia) of the NDPS Act, 1985. Section 2(viia) of the NDPS Act defines the "commercial quantity" in relation to Narcotic Drugs and Psychotropic substances, that means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. The Notification dated 19.10.2001 issued by the Central Government also specifies the commercial quantity of ganja as 20 kgs. Therefore, it is clear that the detenu was in possession of commercial quantity.

2.2. Learned counsel for the petitioner further invited our attention to Section 37(1) (b) of the NDPS Act. As per Section 37(1) (b) of the NDPS Act, when no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity, shall be released on bail or on his own bond unless - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Therefore, there is no need or necessity arisen for the second respondent to pass the impugned



be quashed.

3. Learned Additional Public Prosecutor appearing for the respondents explained to us the basis and foundation for passing the detention order that the detenu was found in possession of 105 kgs. of ganja which is impermissible for anyone to keep and possession and if the detenu is not detained under the Act 14 of 1982, he may be engaged in the sale of intoxication of drug. Therefore, the detention order passed by the second respondent does not warrant any interference.

4. The ground of detention mentioned in para 4 of the impugned detention order stating that the second respondent is satisfied that the detenu is engaged habitually in possession and sale of intoxicating drugs and thereby committing offence, has not been substantiated, when the detenu was booked as a "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14/1982 for a solitary case. Therefore, the ground of detention taken by the second respondent, that the detenu is engaged habitually in possession and sale of intoxicating drugs and thereby committing offence, clearly indicates his total non-application of mind and want of subjective satisfaction.

5. Secondly, the detenu has not moved any bail application and more particularly, the detenu was allegedly found in possession of 105 kgs. of ganja. Section 2(viia) of the NDPS Act clearly defines the commercial quantity that means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. In this regard, it is also necessary to refer to the Notification dated 19.10.2001 issued by the Central Government. In the table shown thereunder, Serial No.55 clearly shows that if anyone is found in possession of 20 Kgs. of ganja, he/she is in possession of commercial quantity. Therefore, when 20 kgs. is shown as commercial quantity as per the Notification dated 19.10.2001 issued by the Central Government, the detenu may not be in a position to approach the trial Court, provided the respondents are in a position to substantiate that at the time of detention, the detenu was in possession of commercial quantity, namely, more than 20 kgs. But, in the present case, the detenu was allegedly found in possession of 105 kgs. In the light of Section 37(1)(b) of the NDPS Act, unless the detenu is able to substantiate his case before seeking grant of bail that he was not in possession of commercial quantity, no court will entertain the bail plea, due to statutory bar, for, Section 37 read with 2 (viia) of the NDPS Act clearly shows that a person, who is in possession of more than 20 kgs. of ganja, is not entitled to get bail. Therefore, the impugned detention order, passed by the second respondent on the ground that there is a possibility of the detenu coming out on bail by filing a bail petition, since, in similar cases, bail are granted, is liable to be quashed for want of subjective satisfaction.



6. In the result, the Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent, in BCDFGISSSV No.14/2019 dated 18.03.2019. Consequently, the detenu, namely, Naveen Kumar, aged about 25 years, who is now detained at Central Prison, Madurai, 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 (Crl.Side)

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Sub Assistant Registrar(CS)

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To

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

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-3688[F] dated 29/01/2020)

H.C.P. (MD) No.808 of 2019

27.01.2020

JMN(26.02.2020) 4P : 7C