



WEB COPY

H.C.P(MD)No.882 and 883 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)Nos.882 and 883 of 2019

Revathi ... Petitioner in H.C.P. (MD).882/2019
Senthil ... Petitioner in H.C.P. (MD).883/2019

Vs.

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District,
Dindigul.
- 3.The Superintendent of Prison,
Madurai Special Prison for Woman,
Madurai District. ... Respondents in H.C.P. (MD).No.882/2019

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District,
Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District. ... Respondents in H.C.P. (MD).No.883/2019

Prayer in H.C.P. (MD).No.882/2019: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus calling for the entire records connected with the detention order of the respondent No. 2 in Detention order No. 52 of 2019 dated 18-08-2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Revathi, W/o.Senthil, aged about 33 years, now confined at Madurai

<https://hcservices.ecourts.gov.in/hcservices/>



Special Prison for Woman, before this Hon'ble Court and set her at liberty forthwith.

Prayer in H.C.P. (MD) .No.883/2019: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus calling for the entire records connected with the detention order of the respondent No. 2 in Detention order No. 51 of 2019 dated 18-08-2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Senthil, S/o.Raman, aged about 43 years, now confined at Madurai Central Prison, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor
* * * * *

COMMON ORDER

(Order of the Court was made by **T.RAJA, J.**)

Both wife and husband namely Revathy, W/o.Senthil and Senthil, S/o.Raman have filed two separate habeas corpus petitions in H.C.P. (MD).Nos.882 and 883/2019, challenging the two separate detention orders, dated 18.08.2019, passed by the second respondent herein/District Collector, Dindigul, branding both of them as "Drug Offender", under Section 3(1) of the Tamil Nadu Act, 14 of 1982.

2.Learned counsel appearing for the petitioners, assailing the validity and correctness of the impugned detention orders, submitted that the impugned detention orders passed by the second respondent/District Collector are legally untenable. Besides, there are no circumstances warranting the second respondent to pass the impugned detention orders against the husband and wife entertaining an unreasonable apprehension in his mind that there is a possibility of them coming out on bail before the Court of Law in the case registered in Cr.No.281/2019 under Sections 8(c) r/w 20(b)(ii)(c) and Section 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as Act) against both Revathi and Senthil. Again, entertaining yet another apprehension that if they are released on bail, they will indulge in similar activities, which are against the public law and order is untenable, for the reason that both the petitioners were found in possession of commercial quantity of ganja, since section 37 of the Act would not permit any one moving of any bail application. Knowing pretty well of the said provision, the second respondent has wrongly passed the impugned detention orders.



3.The learned counsel appearing for the petitioners, taking a second ground, has argued further that when the petitioner Revathi had moved Crl.M.P.No.2904/2019 before the learned Principal Special Judge for Essential Commodities and Narcotic Drugs and Psychotropic Substances Act, 1985, the same was also dismissed on 29.07.2019. Similarly, Crl.M.P.No.2906/2019 was also moved by Senthil and the same has also met failure. Taking note of the fact that Crl.M.P.Nos.2904 and 2906/2019, filed by Revathi and Senthil were dismissed on 29.07.2019 and also considering the fact this Court has granted bail to one Amalraj vide Crl.O.P.(MD). No.10877/2015 in respect of Cr.No.538/2015, registered under Sections 8(c) r/w 20(b)(ii)(c) of the Act, the second respondent wrongly inferred that there is a real possibility of both of them coming out on bail in the ground case. Hence, he sought for quashing of the impugned orders.

4.We have heard Mr.R.Alagumani, learned counsel appearing for the petitioners and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

5.Learned counsel appearing for the petitioners, demonstrating before us the order dated 22.06.2015, in favour of one Amalraj, argued that, it was a case, where there is an allegation that the said Amalraj was found in possession of 20 kgs of ganja, which is not a commercial quantity, as per Section 37 of the Act. But the bail application was taken up on the ground that he was found in possession of commercial quantity of ganja. When the prosecution has failed to substantiate the case that whether the said Amalraj has possessed commercial quantity of ganja or not, this Court, while allowing Crl.O.P.(MD).No.10877/2015, on 22.06.2015, granted bail to him. But, in the present case, it has been sufficiently proved by the respondents 2 and 3 that both the petitioners were in possession of 'commercial quantity', and hence, there is no need to pass the detention orders. Therefore, the impugned detention orders passed charging both the petitioners as "Drug Offenders", are wholly untenable.

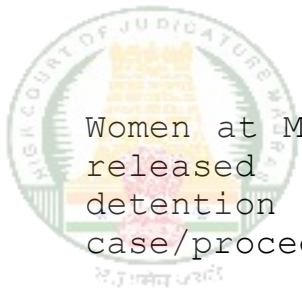
5.Mr.R.Anandharaj, learned Additional Public Prosecutor, appearing for the respondents, would submit that the entire family members have been in the habit of smuggling the commercial quantity of ganja. Hence, the second respondent has rightly come to the conclusion that they are always indulging in these type of activities, which are prejudicial to the maintenance of law and order and public health. Taking note of the maintenance of law and order and public health, which are at risk at the hands of the petitioners, the impugned detention orders have been passed and



6.The ground of detention mentioned in para 4 of the impugned detention orders stating that the second respondent is satisfied that the detenus caused widespread danger to the health of the public and thereby acted in a manner prejudicial to the maintenance of Public Order and Public Health by possessing and transporting such huge cache of contraband, has not been substantiated, when the detenus was booked as "Drug Offenders" as contemplated under Section 2(e) of the Tamil Nadu Act 14/1982 for a solitary case. Therefore, it clearly indicates his total non-application of mind and want of subjective satisfaction.

7.Secondly, the detenus have not moved any bail application after the dismissal of Crl.M.P.Nos.2904 and 2906 of 2019, and more particularly, both of the detenus were allegedly found in possession of 24 kgs. of ganja along with another co-accused. 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 detenus 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 detenus were in possession of commercial quantity, namely, more than 20 kgs. But, in the present case, the detenus were jointly found in possession of 24 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. Further, 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 orders, passed by the second respondent on the ground that there is a possibility of the detenus 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.

8.Accordingly, the impugned detention orders, passed by the second respondent in Detention order Nos. 52 and 51 of 2019 dated 18-08-2019 are quashed. Consequently, both the Habeas Corpus Petitions are allowed and the detenus, namely, Revathy, W/o.Senthil, aged about 33 years and Senthil, S/o.Raman aged about 42 years, who are now detained at Special Prison for



Women at Madurai and Central Prison at Madurai are directed to be released forthwith unless their presence [or] custody [or] detention is required in connection with any other case/proceedings.

WEB COPY

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vs

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District,
Dindigul.
- 3.The Superintendent of Prison,
Madurai Special Prison for Woman,
Madurai District.
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
5. The Joint Secretary to Government,
Public (Law & order), Fort St. George,
Chennai - 9.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) Nos.882 and 883 of 2019

24.01.2020

vr(CO)

TR(11.03.2020)5P 7C

<https://hcservices.ecourts.gov.in/hcservices/>