



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P.(MD)No.996 of 2019

Krishnavathi ... Petitioner/Mother of the detenu
Vs.

1.State of Tamil Nadu,
represented by
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus to call for entire records connected with the detention order passed in P.D.No.33/2019, dated 13.09.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, the petitioner's son - Sivakumar @ Babu, aged about 23 years, son of Rajendran, now detained 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 **P.N.PRAKASH, J.**]

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner is the mother of the detenu viz., Sivakumar



@ Babu, son of Rajendran, aged about 23 years. The detenu has been detained, as per the order of the second respondent, dated 13.09.2019, under Section 2(e) of the Tamil Nadu Act 14 of 1982, branding him as "Drug Offender". Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

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2. It is seen that the ground case was registered in Vadasery Police Station Crime No.252 of 2019 under Section 8(c) read with Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, for the possession of 2.250 Kilograms of Ganja. There is two adverse cases against the detenu for possession of Ganja in Vadasery Police Station Crime Nos.706 of 2017 and 73 of 2019.

3. The learned counsel for the petitioner submitted that in Paragraph No.6 of the grounds of detention, the Detaining Authority has placed reliance upon the order dated 19.07.2018 in CrI.M.P.No.2516 of 2018, that was passed by the Principal Special Court for EC and NDPS Act Cases, Madurai, granting bail to the accused therein, to come to the subjective satisfaction that the detenu would be enlarged on bail in the ground case. But, according to the learned counsel, in the order dated 19.07.2018 in CrI.M.P.No.2516 of 2018, referred to above, upon which, the Detaining Authority has placed reliance, bail was granted on the ground that the accused therein have no previous case to their credit, but, in the case at hand, the detenu has two previous cases to his credit and hence, it cannot be stated that there is imminent possibility of the detenu coming out on bail in the ground case.

4. As rightly contended by the learned counsel for the petitioner, the detenu does have two previous cases to his credit, viz., Vadasery Police Station Crime Nos.706 of 2017 and 73 of 2019 (adverse cases) 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 CrI.M.P.No.2516 of 2018, dated 19.07.2018, relating to the case in Kottar Police Station Crime No.297 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.

5. In the result, this Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent, in P.D.No.33/2019, dated 13.09.2019. Consequently, the detenu, namely Sivakumar @ Babu, Son of Rajendran, aged about 23 years, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody



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

Sd/-

Assistant Registrar (AD I)

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Sub Assistant Registrar (CS)

SML

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Joint Secretary to Government
Public(Law and Order)
Fort.St.George
Chennai-9.
- 3.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
- 4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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