



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGOVAN**

H.C.P. (MD) No.184 of 2021

Senthilnathan

... Petitioner/Brother of Detenu

-VS-

1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

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

3.The Superintendent of Prison,
Central Prison, Tiruchirappalli.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in P.D.No.91/2020 dated 20.12.2020 in detaining the detenu under Section 2(3) of the Tamilnadu Act 14 of 1982 as a Drug Offender and quash the same and direct the respondents to produce the detenue namely JK @ Jayakumar, S/o.Jayaraman, Male, aged about 36 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the brother of the detenu, namely, JK alias Jayakumar, son of Jayaraman, aged about 36 years, against the detention order passed by the second



respondent, in P.D.No.91 of 2020, dated 20.12.2020, branding him as "Drug Offender" as contemplated under Section 2(e) of Tamil Nadu Act, 14 of 1982.

2. Mr.K.M.Karunakaran, learned counsel appearing for the petitioner, would argue that the detention order is liable to be quashed on the sole ground of non-application of mind on the part of the detaining authority while arriving at subjective satisfaction. It is submitted that the similar case relied on by the detaining authority is not similar to the case of the detenu.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents, would submit that the detenu was found in possession of 10 kilograms of Ganja in the ground case and he has also having adverse case, wherein, he was found in possession of 4 kilograms of Ganja. Considering the antecedents of the detenu, the second respondent has rightly clamped the order of detention after being satisfied with the materials produced by the sponsoring authority. According to the learned Additional Public Prosecutor, there is no illegality or irregularity in the order of detention passed by the second respondent warranting interference of this Court and hence, he prayed for dismissal of the Habeas Corpus Petition.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. In the matter on hand, the Inspector of Police, Thanjavur Taluk Police Station has registered a case against the detenu in Cr.No.105 of 2019 for possession of 4 kgs of Ganja. Another case was registered by the same police station against the detenu in Cr.No.1219 of 2020 for possession of 10 kgs of Ganja. The detaining authority, the second respondent herein, to arrive at a subjective satisfaction has referred the bail order granted to one Raja @ Kujiliraja, who was an accused in Cr.No.282 of 2019 on the file of the Inspector of Police, Thanjavur East Police Station. The Additional District and Sessions Judge/Special Judge under E.C., Act Cases, Thanjavur granted bail to the said accused on the ground that he has been in custody for 175 and he did not have any adverse case. But in the case on hand, the detention order came to be passed within 30 days from the date of arrest and he is also having one adverse case as stated above.

6. In the light of the above facts and circumstances, we are convinced that the similar case relied on by the detaining authority for reaching the subjective satisfaction is not similar to the case of the detenu and on that ground the petitioner is entitled to succeed in the habeas corpus petition. Hence, the impugned detention order is liable to be set aside.



7. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.No.91 of 2020, dated 20.12.2020, is set aside. Consequently, the detenu, namely, JK alias Jayakumar, son of Jayaraman, aged about 36 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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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 Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai



5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SSS (CO)
TR(28.04.2021) 4P 6C