



HCP(MD)No.706 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.10.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.706 of 2022

Ulaganathan

...Petitioner/father of the
detenu

Vs.

1. The State represented by,
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600009

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

3. The Superintendent,
Central Prison,
Palayamkottai

4. The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.

...Respondents



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PRAYER:Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records relating to the impugned Order of detention made in M.H.S.Confdl.No.26/2022, dated 14.02.2022, on the file of the District Collector and District Magistrate, Tenkasi District, the second respondent herein, branding the petitioner's son/detenu by name Sivasubramanian, S/o.Ulaganathan, aged 19 years as 'DRUG OFFENDER' who is now confined in Central Prison, Palayamkottai, Tirunelveli District and quash the impugned order of detention and set him at liberty by producing him before this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Sivasubramanian, S/o.Ulaganathan, aged 19 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.26/2022, dated



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14.02.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is arbitrariness exercised by the Authority concerned in clamping the detention order only as against the detenu, while the criminal case has been registered as against six accused on the allegation that they were in possession of 1½ kgs of Ganja. No adverse case has been shown against the detenu(A1). In support of the said contention, the learned counsel for the petitioner, placed reliance on the decision of this Court reported in **2010 (1) MWN (Cr.) 129 (Chandra v. The Secretary to Government)** and the order passed by this Court in H.C.P. (MD).No.613 of 2019, dated 02.01.2020.

3. The learned Additional Public Prosecutor on instructions, would submit that the detention order has been passed by the second respondent after arriving at the subjective satisfaction based on the cogent and relevant



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materials placed by the Sponsoring Authority and to prevent the detenu from indulging in similar activities in future. It is further contended that there is no illegality or irregularity in the order of detention passed by the second respondent.

4. We have heard the rival submissions on either side and perused the materials available on records.

5. In the instant case, it is an admitted fact that there are six accused in the ground case i.e. Puliyanakudi Police Station Crime No.52 of 2022, however, the impugned detention order has been passed only as against the petitioner (A1), when five other accused are also placed in same footing. In **Chandra's case** (cited supra), it has been held that the Authorities cannot exercise their power arbitrarily for picking and choosing only some of the accused to clamp the order of detention.

6. We have carefully gone through the detention order. It is seen that the detenu has allegedly involved in Allinagaram Police Station Crime No. for the offences under Sections 8(c) r/w 20(b) (ii)(B), 25 and 29(1) NDPS



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Act, 1985 for possession of 1 kg 600 gms of Ganja. In Paragraph No.4 of the grounds of detention, the detaining authority has stated as follows:

“4.Hence, I am satisfied that the accused Thiru.Sivasubramanian is **storing and selling the intoxicant material Ganja and thereby committing offences and is also acting** in a manner prejudicial to the maintenance of public order and public health and as such he is a 'Drug Offender' as contemplated under the provision of Section 2(e) of 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) (Section 2(e) of the Tamil Nadu Act 14 of 1982). By committing the above described offences, accused Thiru. Sivasubramanian causes wide spread danger to public order and public health.”

However, apart from the ground case, the grounds of detention does not show any other case against the said detenu. Therefore, the averments in Paragraph No.4 that the detenu has committed crimes continuously shows non application of mind on the part of the detaining authority and hence, the detention order is liable to be quashed.



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7. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.26/2022, dated 14.02.2022 passed by the second respondent is set aside. The detenu, viz. Sivasubramanian, S/o.Ulaganathan, aged 19 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[J.N.B.,J.] & [N.A.V.,J.]
14.10.2022

Index : Yes/No
Internet : Yes
PJJ

To
1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600009.

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

3. The Superintendent,
Central Prison,
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4. The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.

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



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and
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