



HCP(MD)No.810 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.11.2022

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**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.810 of 2022

Maria Alex Britto

.. Petitioner / detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat Chennai-600 009.

2.The District collector and District Magistrate
Tuticorin, Tuticorin District

3.The Superintendent of Prison,
Central Prison,
Madurai District

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records in pursuant to the proceedings of the 2nd respondent in Detention Order in H.S.(M)(Confdl) No.84/2022 dated 29.04.2022 quash the same and consequently direct the respondents to produce the detenu, namely Maria Alex Britto, S/o.Jesu Emanson, aged 22 years who is now detained in Central Prison, Madurai before this Court and set him at liberty.



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For Petitioner : Mr.M.Subash Babu
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by N. ANAND VENKATESH,J.)

The petitioner is the detenu viz., Maria Alex Britto aged about 22 years, S/o.Jesu Emarson. The detenu has been detained by the second respondent by his order in H.S.(M)(Confdl) No.84/2022 dated 29.04.2022 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. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly



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focus his argument on the ground that the detaining authority has taken into consideration the similar case bail order passed in CrI.M.P.No.4451/2019 dated 19.11.2019 and came to the conclusion that in a similar case bail was granted and hence, there is likelihood of the detenu let out on bail and hence, the detention order is liable to be interfered with.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would further submit that investigation was completed and final report was filed before the EC Court, Thoothukudi on 30.06.2022 within the stipulated period and the same has been taken on file in C.C.No.378/2022.

5. On carefully going through the detention order, it is seen that the detaining authority had taken note of the fact that the detenu has filed bail petition in Crime No.129/2021. It is further seen that the order that has been relied upon by the detaining authority in CrI.M.P.No.4451/2019 to come to the conclusion that there is likelihood of the detenu coming out on bail is not similar order, since that was a case involving small quantity of 1.250 kgs of Ganja, whereas in the present case, the quantity involved is 24 Kgs and it



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is a commercial quantity and hence unless the requirement under Section 37 of the NDPS Act is satisfied, there is no question of granting bail to the accused person. It, therefore, reflects non application of mind on the part of the detaining authority.

6. In view of the above, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M)(Confdl) No.84/2022 dated 29.04.2022 passed by the second respondent is set aside. The detenu, viz., Maria Alex Britto, S/o.Jesu Emanson, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (N.A.V.,J.)
28.11.2022

Index : Yes/No

Internet : Yes

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To

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2. The District collector and District Magistrate
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3. The Superintendent of Prison,
Central Prison,
Madurai District
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH, J.
and
N. ANAND VENKATESH, J.

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