



HCP(MD)No.877 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.11.2022

CORAM

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

H.C.P.(MD)No.877 of 2022

B.Esakkiammal

.. Petitioner / wife of the
detenu

Vs.

1.State of Tamil Nadu

Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat Chennai-600 009.

2.The Commissioner of Police,
Tirunelveli City
Tirunelveli.

3.The Superintendent of Prison,
Central Prison II
Puzhal
Chennai

4.The Superintendent of Prison,
Special Sub Jail
Poonthamalli
Chennai.

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the detention order passed in No.42/BCDFGISSSV/2022 dated 28.04.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's husband ie. Baskar, aged about 30 years, S/o.Samuthrapandi, now detained at the Special Sub Jail, Poonamalee, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz., Baskar aged about 30 years, S/o.Samuthirapandi. The detenu has been detained by the second respondent by his order in No.42/BCDFGISSSV/2022 dated 28.04.2022 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.



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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 focus his argument on the ground that the detaining authority has relied upon the order passed in CrI.M.P.No.563/2020 dated 16.10.2020 and came to the conclusion that in a similar case bail has been granted and there is likelihood of the detenu released on bail. The learned counsel submitted that the detaining authority was aware of the fact that the detenu filed bail application in the ground case and the same is pending. The learned counsel for the petitioner therefore submitted that the order relied upon by the detaining authority is not similar and there is non application of mind on the part of the detaining authority.

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,



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Madurai on 31.05.2022 within the stipulated period and the same is yet to be taken on file.

5. On carefully going through the detention order, it is seen that in the present case, FIR was registered against the detenu on the ground that he along with other accused persons were found in possession of 7 Kgs of Ganja, which is inbetween quantity. The order that was relied upon by the detaining authority in CrI.M.P.No.563/2020 dated 16.10.2020 pertains to 1.250 Kgs of Ganja, which is a small quantity. That apart in that case, the accused therein had suffered nearly 40 days of incarceration and trial had already commenced and all the important witnesses were examined. Hence, the order that was relied upon by the detaining authority cannot be considered to be an order passed in a similar case.

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. Since it is submitted that final report has been filed, there shall be a direction to the concerned Court to immediately act upon the final report



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and proceed in accordance with law.

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7. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.42/BCDFGISSSV/2022 dated 28.04.2022 passed by the second respondent is set aside. The detenu, viz., Baskar, S/o.Samuthirapandi, aged about 30 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

Internet : Yes

RR

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat Chennai-600 009.
- 2.The Commissioner of Police,
Tirunelveli City, Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison II, Puzhal, Chennai
- 4.The Superintendent of Prison,
Special Sub Jail, Poonthamalli, Chennai.
- 5.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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