



HCP(MD)No.892 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.12.2022

CORAM

**THE HON'BLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

H.C.P.(MD)No.892 of 2022

Pandiyammal

.. Petitioner /Mother of
the Detenu

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Thanjavur District.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records, connected with the detention order of the respondent No.2 in P.D.No.50/2022 dated 23.05.2022



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and quash the same and direct the respondents to produce the body or person of the detenu by name Muthulingam, son of Agni, aged about 31 years, now detained as “Drug Offender” at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner :Mr.R.Alagumani

For Respondents :Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

DR. G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.

This Habeas Corpus Petition is filed by the mother of the detenu viz., Muthulingam, aged about 31 years, S/o.Agni. The detenu has been detained by the second respondent, by his order in P.D.No.50 of 2022, dated 23.05.2022 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. The ground case against the detenu is that on 16.02.2022 at 18.00 hours, based on the special information received by the police, when surveillance was mounted near over bridge at Kumbakonam, Mela Cauvery, about 82 kgs of Ganja was recovered from six persons travelling in two vehicles. They were arrested and remanded to judicial custody. Investigation in this case was completed and final report was also filed and it was taken for trial by the Sub-Court for NDPS offences at Thanjavur in C.C.No.92 of 2022.

4. As per the detention order, the detaining authority has cited that there is a possibility of the detenu coming out on bail is one of the reasons for the detention order and he has also quoted the bail order in a drug case, as a similar case.



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5. However, the learned counsel appearing for the petitioner citing Section 37(i)(b) of the NDPS Act, which gives embargo on granting bail in the case of commercial quantity and in the alleged similar case, the quantity involved is not a commercial quantity and submitted that the order that was relied upon by the detaining authority is not similar and hence, the detention order suffers from non-application of mind.

6. The learned Additional Public Prosecutr appearing for the respondents submitted that the trial, in the ground case, has commenced and already, three witnesses were examined. He further submitted that there is no bad antecedent against the petitioner.

7. In view of the fact that the detaining authority has not properly applied his mind to the facts as well as the law governing under the NDPS Act regarding grant of bail, the detention order clearly suffers from non-application of mind and the impugned detention order is, therefore, liable to be quashed.



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8. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.50 of 2022 dated 23.05.2022 passed by the second respondent is set aside. The detenu, Muthulingam, aged about 31 years, S/o.Agni, is directed to be released forthwith unless his detention is required in connection with any other case.

(G.J.,J.) (S.M.,J.)
19.12.2022

Index:Yes/No

Internet:Yes/No

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To

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Madurai Bench of Madras High Court,
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