



HCP(MD)No.924 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.924 of 2022

Tamilselvi

.. Petitioner / mother of
the detenu

Vs.

- 1.The State of Tamil Nadu
Additional Chief Secretary to Government
Home Prohibition and Excise Department,
Secretariat Chennai-600 009.
- 2.The District Collector and District Magistrate
Mayiladuthurai District
Mayiladuthurai.
- 3.The Superintendent of Prison,
Central Prison Trichy
- 4.The Inspector of Police,
Mayiladuthurai Railway Police Station,
Mayiladuthurai.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the impugned order of detention made in COC No.08/2022 dated 28.04.2022 on the file of the



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District Collector and District Magistrate, Mayiladuthurai District, the 2nd respondent herein, branding her son/detenu by name Sivakumar, son of Murugan, aged 25 years as Drug Offender who is now confined in Central Prison, Tiruchirappalli, Tiruchirappalli District and quash the impugned order of detention and set him at liberty by producing him before this Court.

For Petitioner : Mr.T.J.Ebenezer Charles

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu viz., Sivakumar aged about 25 years, S/o.Murugan. The detenu has been detained by the second respondent by his order in COC No.08/2022 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.

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.



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3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner contended mainly on the ground that the detaining authority, after being aware of the fact that the detenu has not moved any bail application, came to the conclusion that there is likelihood of the detenu coming out on bail that was granted earlier to the same detenu in the first adverse case in CrI.M.P.No.1604/2018. The learned counsel submitted that this order was not even made part of the paper book and the detaining authority has come to a satisfaction without any supporting materials.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would further submit that investigation has been completed in this case and charge sheet has been filed in C.C.No.85/2022 before the Special Court for EC cases, Thanjavur and the next date of hearing is 29.11.2022.

5. On carefully going through the detention order, the detaining authority was aware of the fact that no bail application was filed by the detenu. However, the detaining authority took into consideration the bail



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granted to the detenu in the first adverse case in Crime No.270/2018 and came to a conclusion that there is likelihood of the detenu coming out on bail. The bail order that was relied upon by the detaining authority does not form part of the paper book. On this ground alone, the subjective satisfaction that was arrived at by the detaining authority is liable to be interfered with by this Court, since it is not supported by any materials. That apart, the first adverse case pertains to possession of 1.100 Kgs of Ganja by the detenu, which is a small quantity. In the present case, the quantity involved is 47.3 Kgs of Ganja, which is a commercial quantity. Hence, even if bail application was filed, the same can be considered only as per the requirement under Section 37 of the NDPS Act. Therefore, the bail order that was granted to the detenu in the ground case can never be considered to be a similar case to that of the ground case. This clearly shows 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. Since it is submitted that final report has been filed, there shall be a



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direction to the concerned Magistrate to immediately act upon the final report and proceed in accordance with law.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in COC No.08/2022 dated 28.04.2022 passed by the second respondent is set aside. The detenu, viz., Sivakumar S/o.Murugan, aged about 25 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

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To

- 1.The Additional Chief Secretary to Government
Home Prohibition and Excise Department,
Secretariat Chennai-600 009.
- 2.The District Collector and District Magistrate
Mayiladuthurai District
Mayiladuthurai.
- 3.The Superintendent of Prison,
Central Prison Trichy
- 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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