



HCP(MD)No.985 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.10.2022

CORAM

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

H.C.P.(MD)No.985 of 2022

S.Tamilselvi

**... Petitioner
/Wife of the Detenu**

Vs.

**1.State of Tamil Nadu,
Rep. by Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.**

**2.The District Collector and District Magistrate,
Madurai District,
Madurai.**

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

... Respondents

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
detention order passed in B.C.D.F.G.I.S.S.S.V.No.20/2022 dated 02.04.2022



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on the file of the 2nd Respondent and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's husband, ie., Sivan, S/o.Rajendran, aged about 49 years, now detained at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Sivan, S/o.Rajendran, aged 49 years. The detenu has been detained by the second respondent by his order in Detention Order B.C.D.F.G.I.S.S.S.V.No.20/2022 dated 02.04.2022 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 would mainly focus his argument on the following two grounds:

(i) The first ground is that the detainee had sought for the translated copy of the bail order passed in CrI.M.P.No.54/2022 and the same was not furnished and hence, the detainee was not able to make an effective representation and

(ii) the second ground is that the detaining authority had taken into consideration the order passed in Cr.M.P.No.54/2022 dated 11.02.2022 and has come to a conclusion that it is a similar case and there is likelihood of the detenu being released on bail, which is not supported by any materials. The learned counsel further submitted that the bail order relied upon by the detaining authority was not similar to that of the case of the detenu. Therefore, according to the learned counsel for the petitioner, non-furnishing of entire documents relating to the similar case and non-furnishing of the same in vernacular language are totally baseless and reflecting the total non application of mind of the Detaining Authority. In



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view of the same, the detenue was not in a position to effectively make a representation.

4.The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

5. On consideration of the submissions made on either side and upon perusal of the documents available on record, especially, the representation made by the petitioner dated 14.06.2022, the petitioner had sought for the translated copy of the bail order in Cr.M.P.No.54/2022 and the same has not been furnished. In view of the same, the detenue was not in a position to effectively make a representation. Further, on perusal of the detention order, especially at Paragraph No.5, the detaining authority, after taking note of the fact that the bail petition filed by the detenu was pending, relied upon the order passed in Cr.M.P.No.54/2022. In that case, bail was granted to the accused therein since she was suffering from cancer and she had already suffered incarceration for more than 38 days. Hence, it is clear that the facts of the present case cannot be considered to be similar to the case dealt in



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Cr.M.P.No.54/2022. It really reflects the non application of mind on the part of the detaining authority. Therefore, on that score, the order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order B.C.D.F.G.I.S.S.S.V.No.20/2022 dated 02.04.2022 passed by the second respondent is set aside. The detenu, viz., Sivan, S/o.Rajendran, aged 49 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.)
19.10.2022

Index : Yes/No
Internet : Yes
PJJ

To:

1.The Additional Chief Secretary to the Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.



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

3. The Superintendent of Prison,
Central Prison,
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4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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