



H.C.P.(MD)No.1073 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1073 of 2022

Sharmila

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

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

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

4.The Inspector of Police,
Thirumangalam Town Police Station,
Madurai.

.. Respondents



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PRAYER: 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 detention order passed by the second respondent in B.C.D.F.G.I.S.S.S.V.No.34/2022, dated 17.05.2022 and quash the same and direct the respondents to produce the detenu namely, Kethiswaran @ Chandrakumar, son of Muniyandi, Male, aged about 34 years, who is detained at Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.S.Muniyandi

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

The petitioner is the wife of the detenu viz., Kethiswaran @ Chandrakumar, son of Muniyandi, aged about 34 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.S.V.No. 34/2022, dated 17.05.2022, holding him to be a "Goonda", as contemplated under Section 2(f) 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 main ground that was urged by the learned counsel for the petitioner is that the detaining authority after being aware of the fact that the bail petition filed by the detenu was dismissed, took into consideration the order dated 09.08.2021, passed in CrI.M.P. No.3571 of 2021 and came to a conclusion that there is a likelihood of the detenu being let out on bail. The learned counsel submitted that the order that was relied upon by the detaining authority cannot be considered to be a similar case and hence, the learned counsel submitted that it is clearly a non-application of mind on the part of the detaining authority to come to a subjective satisfaction.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that



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though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. We have carefully considered the submissions made on either side and also materials available on record.

6. We have carefully gone through the order dated 09.08.2021, passed in CrI.M.P.No.3571 of 2021, the accused in that case does not have any previous case against him and the main accused was arrested and the property was also recovered. That apart, anticipatory bail was granted to the accused therein. In the case on hand, there is a previous case against the detenu and the detenu was arrested and hence, the anticipatory bail granted in CrI.M.P.No.3571 of 2021 cannot be considered to be a similar case and hence, the detention order suffers from non-application of mind on the part of the detaining authority to come to the subjective satisfaction.



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

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.34/2022, dated 17.05.2022, passed by the second respondent is set aside. The detenu, viz., Kethiswaran @ Chandrakumar, son of Muniyandi, aged about 34 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.)
01.12.2022

Index : Yes/No
Internet : Yes
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