



HCP(MD)No.1078 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 21.12.2022

Pronounced on : 23.12.2022

CORAM

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

H.C.P.(MD)No.1078 of 2022

Selvarani

.. Petitioner / Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600009.

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

3.The Superintendent of Prison,
Special Prison for Women,
Madurai District.

.. 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



HCP(MD)No.1078 of 2022

detention order of the respondent No.2 in Detention Order No.54/2022 dated 08.06.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Selvarani, wife of Jeyachandran, aged about 55 years, now detained as “Drug Offender” at Special Prison for Women, Madurai before this Court and set her at liberty forthwith.

For Petitioner :Mr.R.Alagumani

For Respondents :Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

SUNDER MOHAN, J.

The detenu is the petitioner in the Habeas Corpus Petition challenging the order of detention passed against her by the second respondent herein branding her as a “Drug Offender”. The second respondent has passed the detention order based on three adverse cases and a ground case in Crime No.182 of 2022 on the file of Palanichettipatti Police Station.

2. The learned counsel for the petitioner raised several grounds for quashing of the detention order. However, we do not wish to advert to all the grounds raised by the learned counsel except for the main ground that



HCP(MD)No.1078 of 2022

the detention order suffers from non-application of mind with regard to the subjective satisfaction of the detenu being released on bail. The learned counsel submitted that the detaining authority in Paragraph 5 of the detention order has stated that there is a real possibility of the detenu coming out on bail in Crime No.182 of 2022. However, the detaining authority had not considered the fact that the detenu was in remand in another case, namely, the third adverse case in Crime No.15 of 2022 on the file of the Inspector of Police, Palanichettipatti for the offences under Section 8(c) r/w 20(b)(ii)(B) NDPS Act, 1985. The learned counsel submitted that this Court in the case of *Suneka Vs. State of Tamil Nadu and another* reported in *(2007) 1 MLJ (Crl) 257* had quashed the detention order on the ground that the detaining authority had not referred to both the cases in which the detenu was in remand for considering the real possibility of coming out on bail and found the order vitiated by non-application of mind.

3. The learned Additional Public Prosecutor appearing for the respondents submitted that though in paragraph 5 of the detention order, there is no reference to the case in Crime No.15 of 2022, which is the third



HCP(MD)No.1078 of 2022

adverse case, but the case in the adverse case and in the ground case are similar in nature and therefore, the subjective satisfaction cannot be vitiated merely because the detaining authority had not mentioned about the filing of bail application in the adverse case.

4. 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.

5. We find that in the instant case, the detenu was arrested on 12.05.2022 in Crime No.182 of 2022, which is the ground case. The detenue was remanded in the adverse case (i.e.) in Crime No.15 of 2022 on the very same day. In the grounds of detention at paragraph 5, the detaining authority has stated as follows:

“I am aware that accused Tmt.Selvarani was remanded under Judicial custody at Special Prison for Women, Madurai in connection with Palanichettipatti Police Station in Cr.No. 182/2022. Her remand period was extended upto 09.06.2022.”



WEB COPY

6. The detaining authority has not considered the possibility of the detenu being released in the other case. Even if bail order was passed in Crime No.182 of 2022, the detenu would still be detained in Crime No.15 of 2022. The detaining authority has not applied his mind in the above aspect. In a similar case in ***Suneka Vs. State of Tamil Nadu and another*** reported in ***(2007) 1 MLJ (Crl) 257***, this Court has held as follows:

“6. Non-application of mind is on account of the fact that the detenu has been remanded in connection with two cases, but the detaining authority has referred to the possibility of the detenu being released on bail by referring to the bail Applications Crl.M.P.Nos.4007 & 4050 of 2006, which had been filed in Cr.No.44 of 2006. In other words, the detaining authority has not at all considered the possibility of the detenu being released in other case. Even if bail order would have been passed in Cr.No.44 of 2006, the detenu would be still detained in prison as no bail application had been filed in connection with the earlier case, i.e., Cr.No.37 of 2006. The detaining authority has not at all applied his mind to the aforesaid aspect. As a matter of fact, almost on similar circumstances, the Division Bench in 2006(1) CTC 340 (cited supra) had quashed such detention on account of the fact that the detaining authority had only referred to filing of bail application in one crime and there is no



WEB COPY



HCP(MD)No.1078 of 2022

reference to filing of bail application in connection with other similar crime.”

7. Applying the principles laid down by this Court in the aforesaid case, we are of the view that the impugned detention order is liable to be set aside. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.54/2022 dated 08.06.2022 passed by the second respondent is set aside. The detenu, Selvarani, W/o.Jeyachandran, female aged about 55 years, who is detained at Special Prison for Women, Madurai, is directed to be released forthwith unless her detention is required in connection with any other case.

[G.J.,J.] [S.M.,J]
23.12.2022

Index:Yes/No
Internet:Yes/No
Lm



HCP(MD)No.1078 of 2022

To

WEB COPY

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Theni District.
3. The Superintendent of Prison,
Special Prison for Women,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.1078 of 2022

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

Lm

Pre-Delivery Order made in
H.C.P.(MD)No.1078 of 2022

23.12.2022