



HCP(MD)No.1354 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.12.2022

CORAM

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

H.C.P.(MD)No.1354 of 2022

Elavarasi

.. Petitioner/wife of the
Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Nagapattinam Collector Office,
Nagapattinam District.

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

.. 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 connected with the detention order passed in C.O.C.No.28/2022 dated 30.05.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, the petitioner's husband, by name, Nivas @ Partheepan, son of Packirisamy, male, aged about 30 years, who is now detained in Central Prison, Trichy, before this Court and set him at liberty forthwith.

For Petitioner : Mr.G.Karuppasamy Pandian
for M/s.Manimaran. NA

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed by the wife of the detenu challenging the order of detention passed in C.O.C.No.28/2022 dated 30.05.2022 by the second respondent slapped on her husband, by name, Nivas @ Partheepan, son of Packirisamy, aged about 30 years.



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2. The learned counsel for the petitioner would submit that the detention order suffers from non application of mind in as much as the detaining authority has stated in the grounds of detention that the detenu is likely to come out on bail. The learned counsel further submits that the offence alleged against the detenu is under Sections 8(c), 20(b)(ii)(c), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act for possessing commercial quantity and there is a specific bar under Section 37 of Narcotic Drugs and Psychotropic Substances Act for grant of bail. The detaining authority has simply stated that the detenu is likely to come out on bail which suffers from non application of mind.

3. The learned Additional Public Prosecutor would submit that in some cases like this nature, the accused are released on bail *de hors* of Section 37 of Narcotic Drugs and Psychotropic Substances Act, therefore, the order of detention does not suffer from non application of mind.



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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 from the grounds of detention that the detaining authority has recorded the fact that the bail application filed by the detenu was dismissed and has merely stated that he is likely to come out on bail. Apart from that the detaining authority has not stated any specific reason or placed any materials for arriving such a satisfaction. We also find from the records that the respondent police has filed final report as against the accused and the trial is in progress. In such view of the matter, we find that the order passed by the detaining authority suffers from non application of mind and has been passed without any basis. Therefore, the impugned detention order is liable to be quashed.

6. In the result, this Habeas Corpus Petition stands allowed and the order of detention in C.O.C.No.28/2022 dated 30.05.2022 passed by the second respondent is set aside. The detenu, viz., Nivas @ Partheepan, son of



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Packirisamy, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[G.J.,J.] & [S.M.,J.]
06.12.2022

Internet: Yes/No
PJJ

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The District Collector and District Magistrate,
Nagapattinam Collector Office,
Nagapattinam District.

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

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
SUNDER MOHAN, J.**

PJL

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