



H.C.P.(MD)No.1553 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1553 of 2022

M.Pandimurugan

.. Petitioner/Son of the detenu

Vs.

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

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

3.The Superintendent,
Women Special Prison, Madurai,
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 entire records connected with the impugned detention order of the second respondent in detention order B.C.D.F.G.I.S.S.S.V. No.26 of 2022, dated 04.05.2022 and quash the same as illegal and direct the respondents to produce the body or person of the detenu by name Pandeewari, wife of Theivendran, aged about 30 years, now detained in Women Special Prison, Madurai, before this Court and set her at liberty forthwith.

For Petitioner : Mr.I.Sabeer Mohamed

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 son of the detenu viz., Pandeewari, wife of Theivendran, aged about 30 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.26 of 2022, dated 04.05.2022, holding him to be a "Drug Offender", as contemplated



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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.

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 pending before the Court, came to a conclusion that there is a likelihood of the detenu being let out on bail in CrI.M.P.No.54 of 2022. The learned counsel for the petitioner submitted that the order relied upon by the detaining authority was not a similar case. Hence, the learned counsel submitted that it is clearly a non-application of mind on the part of the detaining authority.



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4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that 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. The detaining authority was aware of the fact that the bail petition filed by the detenu was pending, however, the detaining authority took into consideration the bail order passed in CrI.M.P.No.54 of 2022. On carefully going through the said order, the bail was granted to the accused therein as she was suffering from cancer and she had undergone incarceration for nearly 39 days. The bail order that was relied upon by the detaining authority cannot be considered to be a similar case. It, therefore,



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clearly reflects the non-application of mind on the part of the detaining authority to come to the subjective satisfaction.

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.26 of 2022, dated 04.05.2022, passed by the second respondent is set aside. The detenu, viz., Pandeewari, wife of Theivendran, aged about 30 years, is directed to be released forthwith unless her detention is required in connection with any other case.

(M.S.R., J.) (N.A.V., J.)
28.11.2022

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Internet : Yes
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