



WEB COPY



HCP(MD)No.1579 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

CORAM

THE HON'BLE MR JUSTICE M.S.RAMESH

AND

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1579 of 2022

Arokiamary

.. Petitioner / mother of the detenu

Vs.

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

2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records pertaining to the



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impugned detention order passed by the second respondent made in his proceedings in C.No.71/Detention/ C.P.O/T.C/2022, dated 18.05.2022 in detaining the detenu under Section 2(e) of the Tamil Nadu Act 14 of 1982 as a "Drug Offender" and quash the same and direct the respondents to produce the detenu namely, Vaithan @ Sudhakar @ Varkeesraja, son of Andhuvan @ Soosairaj, aged about 42 years, who is detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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 mother of the detenu viz., Vaithan @ Sudhakar @ Varkeesraja, son of Andhuvan @ Soosairaj, aged about 42 years. The detenu has been detained by the second respondent by his order in C.No.71/Detention/ C.P.O/T.C/2022, dated 18.05.2022 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.



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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 detenu has not filed any bail petition, relied upon the order passed in CrI.M.P.No.215 of 2019, came to a conclusion that there is a likelihood of the detenu coming out on bail. The learned counsel for the petitioner 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 though there was delay in considering the representation, on that score



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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. The learned Additional Public Prosecutor on instructions, submitted that the detenu was arrested in this case on 09.05.2022 and the investigation was completed and final report was filed on 04.07.2022 in time and it was taken on file by the Special Court for E.C & NDPS Act Cases, Pudukottai, in Spl.S.C.No.118 of 2022 and it stands posted on 15.12.2022 for serving of copies under Section 207 of Cr.P.C.

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

7. We have carefully gone through the order passed in CrI.M.P.No.215 of 2019. That was a case where the Court has granted bail since there was no serious objection raised on the side of the prosecution and that apart, the accused had faced a long period of incarceration. The



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order relied upon by the detaining authority 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.

8. 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.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.71/Detention/ C.P.O/T.C/2022, dated 18.05.2022 passed by the second respondent is set aside. The detenu, viz., Vaithan @ Sudhakar @ Varkeesraja, son of Andhuvan @ Soosairaj, aged about 42 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.)
02.12.2022

Index : Yes/No



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Internet : Yes/No

RM

To

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Madurai Bench of Madras High Court,
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