



HCP(MD)No.1746 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.12.2022

CORAM

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

H.C.P.(MD)No.1746 of 2022

Vijaya

.. Petitioner/ mother of
the Detenu

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Kanyakumari District, Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

.. 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 P.D.No.25/2022 dated 27.04.2022 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 by name Nambi Rajan @ Nambi, son of Alagumuthu, aged 24 years, now detained at the Central Prison, Palayamkottai, Tirunelveli District, before this Court and set him at liberty forthwith.

For Petitioner : Mr.L.George Paul Anto

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 mother of the detenu against the order of detention passed in P.D.No.25/2022 dated 27.04.2022 by the second respondent.



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2.The detenu Nambi Rajan @ Nambi was arrested on 21.03.2022 for alleged possession of 21 kgs of Ganja by Kottar Police in Crime No. 135/2022 under Section 8(c) r/w 20(b)(ii)(c) of Narcotic Drugs and Psychotropic Substances Act, 1985. The detaining authority vide proceedings in P.D.No.25/2022 dated 27.04.2022, on the *prima facie* reason that the detenu is a notorious Ganja seller in and around Nagercoil town and he had been supplying Ganja near Schools, Colleges, etc., hence termed him as a “Drug Offender”. The detaining authority, being aware of the fact that the detenu has not filed any bail application, by relying upon a similar order in CrI.M.P.No.5126/2019 dated 31.12.2019 through which one Selvam was released on condition bail, came to a conclusion that the probability of detenue being let out on bail is imminent, hence detained him preventively under Act 14 of 1982.

3.The learned counsel appearing for the petitioner would mainly focus his argument on the ground that the detaining authority after taking note of the fact that no bail petition was filed by the detenu, came to a conclusion that there is a likelihood of the detenu being let out on bail.



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Further the learned counsel for the petitioner submitted that since the quantity of the narcotic drug involved exceeds the limit prescribed for commercial quantity, there is a statutory embargo under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 for considering the bail application. Therefore, the reason stated for detaining the detenu under Act 14 of 1982 is baseless and the same also suffers from non application of mind.

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. On perusing the detention order, it is seen that the subjective satisfaction expressed and recorded in the detention order by the detaining authority is based on the bail granted to an accused, who was arrested for possessing in between quantity ie., less than the commercial quantity where there is no embargo under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 Act whereas the detenu in this case is



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involved in possession of commercial quantity of Ganja and it shows the non application of mind on the part of the detaining authority and hence, the detention order is liable to be quashed.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.25/2022 dated 27.04.2022 passed by the second respondent is set aside. The detenu, viz., Nambi Rajan @ Nambi, son of Alagumuthu, aged 24 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[G.J.,J.] & [S.M.,J.]
05.12.2022

Index: Yes/No
Internet: Yes/No

PJL

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.



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2.The District Collector and District Magistrate,
Kanyakumari District, Nagercoil.

3.The Superintendent of Prison,
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Palayamkottai,
Tirunelveli District.

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



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and
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