



WEB COPY



HCP(MD)No.1813 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2022

CORAM

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

H.C.P.(MD)No.1813 of 2022

Mariammal

.. Petitioner/
Wife of the Detenu

Vs.

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

2.The Commissioner of Police,
Commissioner Office,
Trichy District.

3.The Superintendent,
Central Prison,
Trichy.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a writ of Habeas Corpus, calling for the records of the 2nd respondent
pertaining to the Detention Order made in C.No.



HCP(MD)No.1813 of 2022

40/Detention/C.P.O/TC/2022 dated 30.03.2022 and quash the same and direct the respondents to produce then person or body of the detenu, namely Kumar @ Vellali Kumar, aged 40 years, son of Raju, now detained at the Central Prison, Thiruchirappalli, before this Court and set him at liberty.

For Petitioner : Ms.S.Vijayashanthi

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu, who was detained on 30.02.2022 by order dated 30.03.2022. He has been branded as a 'drug offender' under Tamil Nadu Act 14 of 1982. Challenging the said detention order, this Habeas Corpus Petition is filed.



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2. The learned counsel for the petitioner submits that there is a total non application of mind on the part of the detaining authority in arriving at the subjective satisfaction as regards the possibility of the detenu coming out on bail by relying upon a similar case, where the accused therein in Crime No.358/2021 was released on bail in Cr.M.P.No.1192/2021 dated 06.08.2021 on the file of the Additional District and Sessions Judge, Special Court for EC and NDPS Act cases, Pudukkottai. The accused therein was released on bail since he has no adverse case. According to the learned counsel appearing for the petitioner, the similar case that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu being released on bail, is not a similar case. Hence, the detention order suffers from non application of mind.

3. The learned Additional Public Prosecutor submitted that there are two adverse cases against the detenu; and that the bail order relied upon by the detaining authority to arrive at the subjective satisfaction of detenu coming out on bail is similar to the facts of the instant case; and hence the detention order is valid.



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4. We have heard the learned counsels appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

We have also perused the records relied by the detaining authority for passing the detention order.

5. On perusal of the similar order relied upon by the detaining authority, we find that the accused therein was not similarly placed as that of the detenu. The accused therein was granted bail because there were no previous cases against him. However, in this case, we find that there are two previous cases and a ground case. The detaining authority has not applied his mind as regards the similarity of the case. Further, we find that the detenu is involved in offence possessing small quantities and in-between quantity of Ganja. Therefore, we are of the view that the subjective satisfaction of the detaining authority is vitiated. For the said reason, the detention order is liable to be quashed.

6. In the result, this Habeas Corpus Petition stands allowed and the order of detention in C.No.40/Detention/C.P.O/TC/2022 dated 30.03.2022, passed by the second respondent is set aside. The detenu, viz., Kumar @



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Vellali Kumar, son of Raju, aged 40 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[G.J.,J.] & [S.M.,J.]
16.12.2022

Index: Yes/No
Internet: Yes/No
PJJ

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

2. The Commissioner of Police,
Commissioner Office,
Trichy District.

3. The Superintendent,
Central Prison,
Trichy.

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



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and
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