



WEB COPY



H.C.P.No.1753 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.No.1753 of 2022

Sarmila

W/o.S.Dharmaraj

..

Petitioner/

Wife of detenu

Vs.

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat
Fort St.George, Chennai-600 009.
2. The Commissioner of Police/Detaining Authority
City Police Officer
Huzur Road, Coimbatore City
Coimbatore – 18
3. The Superintendent of Police
Central Prison, Coimbatore
Coimbatore District
4. State rep. By its
The Inspector of Police
C-1, Kattoor Police Station

Page Nos.1/8



H.C.P.No.1753 of 2022

Coimbatore District

.. Respondents

WEB COPY Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 27.08.2022 on the file of the 2nd respondent made in proceedings memo C.No.56/G/IS/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely S.Dharmaraj, son of Subramaniam, aged 24 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Cenral Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.N.Narkeeran

ORDER

[Order of the Court was made by N. ANAND VENKATESH, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 27.08.2022 bearing reference C.No.56/G/IS/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted,

Page Nos.2/8



H.C.P.No.1753 of 2022

fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is one adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.387 of 2022 on the file of C-1 Kattoor Police Station for alleged offences under Sections 8(c) read with Section 20(b)(ii)(C) and Section 29(1) of NDPS Act, 1985. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.W.Camyles Gandhi, learned counsel on record for petitioner



H.C.P.No.1753 of 2022

and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.N.Narkeeran, advocate, for all respondents are before us.

5. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority was aware of the fact that the detenu had not filed any bail application as on the date when the detention order was passed and in spite of the same, came to a conclusion that there is likelihood of the detenu coming out on bail by relying upon the order passed by the learned Additional District Judge /Presiding Officer, Special Court for Essential Commodities Act cases, Coimbatore in C.M.P.No.643 of 2018 dated 03.09.2018. The learned counsel submitted that the order that was relied upon by the detaining authority is not a similar case and in that case, the concerned Court had granted statutory/default bail to the accused therein. Hence, it was contended that detention order suffers from non-application of mind.

6. The FIR was registered in Crime No.387 of 2022 for offences under Sections 8(c) read with Section 20(b)(ii)(C) and Section 29(1) of NDPS Act, 1985. There are totally three accused persons in this case and the detenu is ranked as A1. The detenu was arrested on 22.07.2022 and the



H.C.P.No.1753 of 2022

detention order came to be passed on 27.08.2022. The detaining authority was aware of the fact that the detenu had not moved any bail application and in spite of the same, came to the conclusion that there is an imminent possibility of the detenu coming out on bail by relying upon an order passed in C.M.P.No.643 of 2018. It is seen that the accused therein was enlarged on bail on the ground that the final report was not filed within 180 days. Hence, statutory/default bail was granted to the accused therein and bail was not granted on merits. Hence, the order that was relied upon by the detaining authority cannot be considered to be arising out of the same case since in the present case, no bail application has been filed by the detenu and Section 167(2) Cr.PC would not have come to the aid of the detenu even if he had filed a bail petition and *ex consequenti*, the impugned detention order suffers from non-application of mind.

7. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 22.07.2022 in the course of investigation and ultimately the investigation was completed and final report was filed on time i.e., on 21.10.2022 and it was taken on file by the NDPS Court, Coimbatore in C.C.No.1 of 2023. In view of the same, the



H.C.P.No.1753 of 2022

order passed in this case will not stand in the way of the trial Court in considering the bail application filed by the detenu on its own merits and in accordance with law and on fulfillment of the mandate under Section 37 of NDPS Act since quantity involved in the present case is a commercial quantity.

In the result, captioned HCP is allowed. Impugned detention order dated 27.08.2022 bearing reference C.No.56/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.S.Dharmaraj, aged 24 years, son of Mr.Subramaniam is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(N.A.V.,J.)

20.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore



H.C.P.No.1753 of 2022

To

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C-1, Kattoor Police Station
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5. The Public Prosecutor
Madras High Court
Chennai



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H.C.P.No.1753 of 2022

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N. ANAND VENKATESH, J.,

gpa

H.C.P.No.1753 of 2022

20.03.2023

Page Nos.8/8