



HCP(MD)No.172 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.07.2023

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**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.172 of 2023

Thendral

.. Petitioner /Wife of the Detenu

Vs.

1.The State of Tamil Nadu,
represented by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 9.

2.The District Magistrate and District Collector,
Theni District,
Theni.

3.The Superintendent,
Central Prison,
Madurai.

4.The Inspector of Police,
Thevaram Police Station,
Theni District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a writ of Habeas Corpus, calling for the records relating to the



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detention order passed by the second respondent in Detention Order on 19.01.2023 in Detention Order No.10/2023 and to quash the same and direct the respondents to produce the body or person of the detenu, Subramani, (aged 29 years) S/o.Murugan, before this Court and set him at liberty, now confined at Central Prison, Madurai.

For Petitioner : Mr.D.Rameshkumar

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

The petitioner is the wife of the detenu viz., Subramani, aged about 29 years, S/o.Murugan. The detenu has been detained by the second respondent by his order in Detention Order No.10/2023 dated 19.01.2023 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.

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.



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3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there are no adverse cases against the detenu, however, the detaining authority had come to the subjective satisfaction that the detenu has committed crimes continuously and acted in a manner prejudicial to the maintenance of public order and public health.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.

5. Admittedly, there are no adverse cases implicating the detenu for similar of other cases. While that being so, the detaining authority, had observed in the detention order that the detenu herein has committed crimes continuously and thereby acted in a manner prejudicial to the maintenance of public order. We are unable to comprehend as to how the detaining authority can come to such a conclusion that the detenu has been continuously committing crimes, when even according to him, there are no previous or adverse cases.



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6. A co-ordinate Bench of this Court in the case of ***Muniyammal and another Vs. The State of Tamilnadu represented by its Additional Chief Secretary to Government, Home, Prohibition and Excise Department and others*** in ***H.C.P.(MD).Nos.1643 and 1653 of 2022 vide order dated 02.06.2023***, had dealt with a similar situation and held that the subjective satisfaction arrived in such circumstances may not be justifiable. The relevant portion of the order reads as follows:

“7. Though such an attempt was made by the learned Additional Public Prosecutor appearing for the respondents, we are not impressed with the same because if a detaining authority has come to a subjective satisfaction, that too branding a person as a Goonda on the basis of his continuous involvement of crime and if it is averred in the grounds of detention, there must be some materials backing such a decision or conclusion arrived at by the detaining authority and without any such material, as no such previous crime has been registered against these two detenues, such a conclusion arrived by the detaining authority to have a subjective satisfaction may not be justifiable, therefore, on that ground we feel that the impugned orders would not stand in the legal scrutiny.



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7. The aforesaid extract is self-explanatory. Thus, the subjective satisfaction, which the detaining authority had arrived at, is not on a proper appreciation of facts of the case and therefore, the order itself cannot be sustained 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 Detention Order No.10/2023 dated 19.01.2023 passed by the second respondent is set aside. The detenu, viz., Subramani, S/o.Murugan, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (M.N.K.,J.)
27.07.2023

NCC : Yes / No
Index : Yes / No
Lm/Yuva



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- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Inspector of Police,
Thevaram Police Station,
Theni District.
- 5.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George,
Chennai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

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