



HCP(MD)No.194 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.07.2023

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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.194 of 2023

S.Shiny

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government
Home Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

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

.. 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 entire records connected with the detention order passed in P.D.No.63 of 2022, dated 20.09.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's husband i.e., Sahaya Kavin @ Karuvai @ Kavin, son of Rajamani, aged about 24 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz., Sahaya Kavin @ Karuvai @ Kavin, son of Rajamani, aged about 24 years. The detenu has been detained by the second respondent by his order in P.D.No.63 of 2022, dated 20.09.2022, holding him to be a "Drug Offender", as contemplated



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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.

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 the detaining authority, after being aware of the fact that the bail application filed by the detenu is pending, came to the conclusion that there is a real possibility of the detenu coming out on bail by relying upon the order passed in CrI.M.P. No.297/2022 dated 01.03.2022. The learned counsel therefore submitted that the order that was relied upon by the detaining authority was not similar and the accused therein was granted bail during COVID-19 pandemic and on that score, the detention order is liable to be interfered with.



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

5. On carefully going through the detention order, the detaining authority was aware of the fact that the detenu filed bail application and the same is pending. However, the detaining authority took into consideration the order passed in CrI.M.P.No.297/2022 and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that the accused therein had been granted bail during the COVID-19 pandemic and therefore, the bail order that was relied upon by the detaining authority cannot be considered to be a similar one.

6. In view of the above, the detention order suffers from non-application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.63 of 2022, dated 20.09.2022 passed by the second respondent is set aside. The detenu, viz., Sahaya Kavin @ Karuvai



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@ Kavin, son of Rajamani, aged about 24 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.)
12.07.2023

Internet : Yes
Index : Yes / No
NCC : Yes / No

RM/RR

To

- 1.The Additional Chief Secretary to Government
State of Tamil Nadu,
Home Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR,J.

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