



H.C.P.(MD) No.247 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.247 of 2023

K.Arunkumar

... Petitioner / Brother of detenu

Vs.

1.State of Tamil Nadu, rep. by

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

2.The Commissioner of Police,

O/o. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3.The Superintendent of Prison,

Central Prison,
Tiruchirappalli.

...Respondents



H.C.P.(MD) No.247 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records in detention order passed in C.No.94/Detention/C.P.O/T.C/2022 Dated : 19.07.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the Petitioner's brother namely Alwinkumar S/o. Kamaraj, male, aged 32 years, who is detained in Central Prison, Tiruchirappalli before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

The petitioner is the brother of the detenu. This Habeas Corpus Petition has been filed by him to call for the entire records in detention order passed in C.No.94/Detention/C.P.O/T.C/2022 Dated : 19.07.2022 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the Petitioner's brother namely Alwinkumar S/o. Kamaraj, male, aged 32 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.



H.C.P.(MD) No.247 of 2023

2. Heard Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner, who would submit that the detaining authority has relied upon a similar case, where the accused therein had been granted bail within eleven days, therefore, similarly, the detenu also would get bail and if he comes out bail, it will be very difficult for the respondents to maintain public order.

3. In this regard, the learned counsel appearing for the petitioner would submit that, insofar as the accused in the similar case is concerned, there has been six adverse cases, which were pending, therefore, the bail was granted.

4. Insofar as the present detenu is concerned, even though six previous cases had been filed against him, on his own admission conviction has been registered, and therefore no such adverse case is pending and moreover there is no material to show that, certainly the detenu would come out on bail in this case also, he contended.

5. He would also claim that in the detention order in Tamil version it had only been stated that, “பொது ஒழுக்கு பராமரிப்பிற்கு குந்தகமான



H.C.P.(MD) No.247 of 2023

நடவடிக்கைகளில் சூடுபடுவதில் ஈடுபட்டு தடுக்க” whereas the English translation says, the aforesaid individual is found to be indulging in an activity prejudicial to the maintenance of public order and public health.

6. By citing this translated version in English, the learned counsel would submit that the word 'public health' is unwantedly inserted in the translated version, whereas no such version is available in the Tamil version, therefore, it shows the non-application of mind on the part of the detaining authority. For these two reasons, the learned counsel appearing for the petitioner seeks indulgence of this Court against the impugned detention order.

7. Heard Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, appearing for the respondents, who would, insofar as the similar case theory and the grounds raised in this regard by the detenu side, rely upon the judgment of the Hon'ble Supreme Court in **Senthamilselvi vs. State of Tamil Nadu and Ors.** reported in **(2006) 5 SCC 676**. That apart, there is a Division Bench judgment of this Court in H.C.P.(MD) No.244 of 2014, dated 18.08.2014, in the matter of **Mariappan v. The District**



Collector and District Magistrate, Tirunelveli, wherein in paras 71 and 72, the Division Bench has stated the following:-

"71. While considering reasonableness of the detaining authority to arrive at the subjective satisfaction on the aspect of bail, we are of the view that the detaining authority can apply only rule of logic and reasonableness..

72. Though the detaining authority has used the expression, "similar cases", the court is conscious of the fact that there cannot be similarity or same set of facts. Similar cases, therefore in the humble opinion of this court, should be meant. 'similar offences', and it cannot be expected to have the same set of facts, with same overt acts against the accused involved."

8. Stating these two decisions, the learned Additional Public Prosecutor appearing for the respondents would submit that, if the detaining authority reasonably apprehend and based on which, he comes to the satisfaction that, the detenu would come out on bail in future, that is enough to come to a safe conclusion and based on which the detention order can be passed against such person, hence, insofar as the similar case theory is concerned, it must be only a similar case, not exactly the similar facts of the case, he contended.



9. Insofar as the translation is concerned, pertaining to the detention order, merely because in the English version the word 'public health' also has been added due to inadvertance, that would not cause any prejudice to the detenu as the detenu admittedly knows only Tamil, therefore, the vernacular document in Tamil has already been supplied to him, which has been taken into account and accordingly, he can act upon by filing any representation before the Government, hence, by having the English translated version, since the detenu has not been prejudiced, that ground also cannot be taken effectively against the detention order, he contended.

10. We have considered the said submissions made by the learned counsel appearing for both sides and perused the materials on record.

11. Insofar as the similar case is concerned, as rightly pointed by the learned Additional Public Prosecutor appearing for the respondents, the issue has been settled more than in one case. The aforesaid two cases cited by the learned Additional Public Prosecutor definitely would advance the case of the second respondent i.e., the detaining authority as the similar case



must be similar case on similar offence and not exactly the similar facts of the case.

12. Moreover, in the case of the detenu herein, admittedly, there has been six adverse cases and in all the six adverse cases, according to the learned counsel for the petitioner, on the own admission on the part of the detenu, who stood as the accused in those cases, he had been convicted. Therefore, he earned the conviction in all the six adverse cases and this is seventh case in a row, hence, it is a fit case to be considered that, the detenu is habitually indulging in such kind of offences, therefore, the subjective satisfaction arrived at by the detaining authority which has been reflected in the grounds of detention is to be accepted.

13. Insofar as the translated version is concerned, as rightly pointed out by the learned Additional Public Prosecutor, the Tamil version is having the correct wordings and that alone has been relied upon and therefore, by having English translated version no prejudice since would be caused to the detenu, that ground also cannot be taken into account for the purpose of assiling the detension order successfully on the part of the detenu.



H.C.P.(MD) No.247 of 2023

14. For all these reasons, this Habeas Corpus Petition fails, hence,
it is dismissed.

(R.S.K., J.) & (K.K.R.K, J.)
17.04.2023

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

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police,
O/o. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P.(MD) No.247 of 2023

R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.

SJ

H.C.P.(MD)No.247 of 2023

17.04.2023