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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.997 of 2022

S.Rajeshwari ... Petitioner / Wife of the Detenue

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,
Tenkasi District, Tenkasi.

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

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with

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the detention order passed in M.H.S.Confdl.No.57 of 2022 dated 27.05.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenue, namely, the petitioner's husband ie., Saravanakumar, aged about 37 years, S/o.Shanmugasundaram, 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 ***R.SURESH KUMAR, J.***)

The petitioner is the wife of the detenu, namely, Saravanakumar, aged about 37 years, S/o.Shanmugasundaram. The detenu has been detained by the 2nd respondent by his proceedings in M.H.S.Confdl.No.57 of 2022 dated 27.05.2022, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.In the ground case, the detenue was arrested on 14.05.2022, subsequently, on 27.05.2022, the impugned detention order was passed.

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The grounds for detention, according to the respondents, are that in respect of the detenue, there is one adverse case for the offence punishable under Section 307 IPC and the ground case is for the offences punishable under Sections 341, 387, 506(ii) and 294(b) IPC.

3.The detention order has been challenged on the ground that insofar as the similar case theory, where bail was granted, is concerned, it was the case, where there was no injury, therefore, the Court might have taken a lenient view and granted bail. Insofar as the case in respect of the detenue that is adverse case is concerned, there was an injury and that itself has not been noticed. That apart, mainly, Mr.N.Pragalathan, learned counsel appearing for the petitioner has raised a ground that the representation though had been given on 14.06.2022, which was received on 20.06.2022 by the Government, the rejection order was sent only on 04.07.2022. Therefore, there has been a delay, which has not been explained.

4.That apart, it is the further contention of the petitioner that the representation though was submitted on 14.06.2022 addressed only to the

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Government, which was received on 20.06.2022, in the counter affidavit filed by the detaining authority at Paragraph No.17, it has been categorically stated that the representation dated 09.06.2022 was submitted by the detenue and was received by the Government on 01.07.2022 and orders sent to the detenue by the Government on 11.07.2022.

5.Therefore, pointing out this discrepancy with regard to the date of representation, receipt of the representation, consideration and orders passed on the representation, it is exposing total non-application of mind on the part of the detaining authority, who filed the counter not only for him but also on behalf of other respondents. Therefore, the said ground itself is enough to come to a safe conclusion that it was under total non-application of mind. This matter has been dealt with by filing this counter affidavit on behalf of the respondents and therefore, for this ground, the learned counsel for the petitioner seeks indulgence of this Court to quash the impugned detention order.

6.However, on the other hand, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondents, on instructions,

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would submit that insofar as the detail given with regard to the consideration of the representation given by the detenue is concerned, though there has been some typographical error occurred in the counter affidavit giving the date of representation as well as the date on which it was received by the Government, that would not hamper to sustain the impugned detention order, because there has been an adverse case on the previous day and next day the detenue had involved in another case. Therefore, having considered the circumstances and attitude on the part of the detenue, the detaining authority on the basis of the subjective satisfaction had come to a conclusion that the provisions of Act 14 of 1982 can be slapped on the detenue. Hence, the learned Additional Public Prosecutor for the respondents wants to sustain the order impugned.

7.We have given anxious consideration to the said submissions made by both sides and perused the materials placed before this Court.

8.Insofar as the ground with regard to the date of representation, consideration and orders passed by the Government in this regard is concerned, the stand of the Government as reflected in the proforma is that

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the representation was dated 14.06.2022, which was received by the Government on 20.06.2022 and it was considered at various level, like Under Secretary, Deputy Secretary and the Hon'ble Minister, ultimately, rejected on 01.07.2022 and the rejection order was sent to the detenue on 04.07.2022.

9.Whereas in Paragraph No.17 of the counter affidavit filed by the detaining authority, the following has been stated:-

> *"17.The averments made in ground (ix) of the affidavit it is humbly submitted that the copy of affidavit of the sponsoring officer need not be furnished to the detenue as contended in this paragraph. It is submitted that there was no delay in considering the representation sent on behalf of the detenue, as contented in this paragraph. The details of representation received by this respondent are as follows.*
>
> *1.Representation dated 09.06.2022 submitted by the detenue was received by Government on : 01.07.2022*
>
> *2.Remarks sent to the deteneu by Government : 11.07.2022*
>
> *Therefore the averments put forth in this paragraph could not be sustained."*

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10.In the said averment of the counter, the detaining authority has stated that the representation was on 09.06.2022, which was received on 01.07.2022 and remarks sent to the detenue on 11.07.2022.

11.On perusal, this Court finds that all the three dates given in the counter by the detaining authority are false comparing with the dates given by the Government in the proforma, which has been produced before this Court.

12.Therefore, that itself shows that the detaining authority under total non-application of mind has filed the counter.

13.Moreover, no explanation whatsoever has been given either by the Government or on behalf of the Government in the counter affidavit filed by the detaining authority as to why there has been a delay in consideration, because the representation dated 14.06.2022 was received on 20.06.2022, whereas the order was passed either on 01.07.2022 or 04.07.2022 and these delays have not been explained.

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14.Be that as it may, on what basis the detaining authority has informed this Court by filing the aforesaid submission in Paragraph No.17 is not known because all the three dates mentioned therein are not matching with the dates given in the proforma. Therefore, without even having any supportive document if at all the detaining authority has filed this counter giving this kind of information wrongly, that would be serious issue and the detaining authority, being the District Collector and District Magistrate, is expected to put the fact right before this Court, when he files counters on behalf of the authorities concerned.

15.In view of the aforestated flaw on the part of the respondents, we have no hesitation to hold that the impugned detention order would not stand in the legal scrutiny and therefore, the petitioner on behalf of the detenue is entitled to get the benefit of quashment of the detention order. In the result, the impugned detention order passed by the 2nd respondent in M.H.S.Confdl.No.57 of 2022, dated 27.05.2022 is set aside. Therefore, this Habeas Corpus Petition is allowed. As a sequel, there shall be a direction to the 3rd respondent to set the detenue, namely, Saravanakumar,

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S/o.Shanmugasundaram, aged about 37 years, at free, if his presence in the jail is not required for any other cases.

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

08.03.2023

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

MYR

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,
Tenkasi District, Tenkasi.

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

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

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