



HCP(MD)No.1077 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.01.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

H.C.P.(MD)No.1077 of 2022

Murugan

.. Petitioner / Father of the
Detenu

Vs.

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

2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli-9.

3.The Inspector of Police,
Kalladaikurichi Police Station,
Tirunelveli District.

4.The Superintendent of Prison,
Central Prison,

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Palayamkottai.
5.The Distrit Prison,
Perurani,
Thoothukudi 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 Detention Order passed by the 2nd respondent in M.H.S.Confdl.No.88/2022 dated 08.06.2022 and to quash the same and direct the respondents to produce the person or body of the detenu, namely, Rajeshkannan @ Kannan, son of Murugan, aged about 23 years, to be detained at Central Prison, Palayamkottai, now detained at District Prison, Perurani, Thoothukudi District, before this Court and set him at liberty.

For Petitioner : Mr.R.Anand
for Mr.M.Maharaja

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



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ORDER

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DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

The petitioner is the father of the detenu by name, Rajeshkannan @ Kannan. He is one of the accused in Crime No.120/2022 registered for the offence under Sections 147, 148 & 302 IPC altered into 147, 148 & 302 r/w 149 IPC by the third respondent police.

2. The son of the petitioner was arrested on 16.05.2022 and remanded to judicial custody. The detention order under Act 14 of 1982 was passed on 08.06.2022 against Rajeshkannan @ Kannan and other accused. Though all the accused have filed Habeas Corpus Petitions challenging the detention order, as far as this detenu is concerned, he has a unique ground to challenge the detention order that he has no bad antecedents and no overtact attributed against him except the allegation of instigating the other assailants to kill the deceased Sukumar. While so, the detaining authority referring bail order in a murder case, where the assailant was granted bail after 81 days of



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custody, has recorded satisfaction that there is a real possibility of the detenu, Rajeshkannan @ Kannan, coming out on bail. Further the detaining authority recorded his apprehension that if the detenu comes out on bail, he will indulge in further activities in future, which will be prejudicial to the maintenance of the public order and peace. The recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging any such activities.

3. To entertain such apprehension, there must be some material to indicate that the detenu has a propensity to commit the crime and he has exhibited such propensity in the past. However, in this case, though the other accused, who have been arrested and detained under Act 14 of 1982, have some antecedents exhibiting the propensity of repeating the similar crime, as far as the detenu is concerned, there was no such antecedents and his role, even as found in the FIR alleged to have given by the eyewitness, who is none other than the wife of the deceased, would clearly show that he has not played any substantial role in the crime except being present and instigated the crime which is the matter for trial.



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4. This Court is of the view that in the absence of any material for arriving at the subjective satisfaction regarding the propensity to commit the crime in future by the detenu, the power under Act 14 of 1982 cannot be exercised and the detenu need not be preventively detained depriving his liberty. This shows the non application of mind on the part of the detaining authority and hence, the detention order is liable to be quashed.

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.88/2022 dated 08.06.2022 passed by the second respondent is set aside. The detenu, viz., Rajeshkannan @ Kannan, son of Murugan, aged about 23 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[G.J.,J.] & [S.M.,J.]
10.01.2023

Index: Yes/No
Internet: Yes/No
P JL



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To

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2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
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3. The Inspector of Police,
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4. The Superintendent of Prison,
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Palayamkottai.

5. The District Prison,
Perurani,
Thoothukudi District

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



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**DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.**

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