



H.C.P.(MD) No.1062 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.1062 of 2022

M.Maheswari

... Petitioner / Mother 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,
Tiruchirappalli District, Tiruchirappalli.

3.The Superintendent,
Central Prison, Tiruchirappalli,
Tiruchirappalli District.

...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 Cr.M.P.No.39 of 2022 dated 09.06.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, the petitioner's son, ie., Prasanth, aged about 25 years, S/o.Murugesan, now detained at the Central Prison, Tiruchirappalli 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 mother of the detenu, namely, Prasanth, S/o.Murugesan, aged about 25 years. The detenu has been detained by the 2nd respondent by his proceedings in Cr.M.P.No.39 of 2022, dated 09.06.2022, 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.The detenue had been arrested for a ground case on 26.04.2022, which is alleged for the offence punishable under Section 302 IPC along



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with other accused. He stood as A2 in the said case. Subsequently, the 2nd respondent, considering the antecedent of the detainee, where he had found two adverse cases against the detainee, had decided to slap the provisions of Act 14 of 1982 on the detainee, thereby on 09.06.2022, the detention order has been passed by the 2nd respondent. Challenging the same, the present Habeas Corpus Petition has been moved.

3.Assailing the said detention order, Mr.N.Pragalathan, learned counsel appearing for the petitioner has contended mainly on two grounds, which have been given as grounds for passing such detention order. The first ground, according to the respondents, was that there was a likelihood of granting bail to the detainee in the ground case, as in a similar case bail was granted already by the Court concerned. The second ground was that due to the said incident of the alleged murder, where the detainee allegedly involved, it is the conclusion of the 2nd respondent that by witnessing the act of the accused and his associates, the general public of Kulumani and nearby villagers feared and got panic. The persons, who were at the adjacent villages, were feared about the insecurity in their minds.



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4.If these are the two grounds under which the impugned detention order has been passed, the learned counsel for the petitioner would submit that insofar as the similar case theory is concerned, in that case the accused was having two children and the same was also taken into account by the Court, which granted bail. Therefore, it cannot be first of all treated as a similar circumstance or similar ground case, wherein the detinue was arrested earlier.

5.Secondly, insofar as the theory of fear and panic and the deprivation of the public order in that locality is concerned, except three lines mentioned in the grounds for detaining, no other materials had been given by the 2nd respondent. Therefore, that ground has been taken as a self imposed ground only for the purpose of passing the impugned detention order. Therefore, the detinue is entitled to set at liberty he contended.

6.On the other hand, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondents would submit that the detinue is one among the several accused in the ground case, which is the



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case for murder. When the antecedents of the detinue and other accused were examined by the 2nd respondent, it was found that there are previous antecedents, where two adverse cases are reported against the present detinue and one adverse case each were reported in respect of other two detenues, who filed connected Habeas Corpus Petitions.

7.Considering the circumstances, which was prevailing then, that these detenues may get bail easily by the Court by citing the similar circumstances in other case and in that case that will be detrimental to the public order in that locality as the manner in which the murder was taken place certainly created panic in that locality, the 2nd respondent on the subjective satisfaction of the circumstances had decided to pass the detention order against the detinue and therefore, the learned Additional Public Prosecutor wants to sustain the said order, which is impugned in this petition.

8.We have given anxious consideration to the submissions respectively made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.



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9.Insofar as the similar case theory is concerned, they cited that one Kalaiselvi, who was the accused, was granted such bail and that has been cited as similar case for invoking the theory of similar case.

10.However, we noticed that the very same Kalaiselvi has been cited by the respondents in some other case, which we come across recently and therefore, if bail is granted by the Court of law in one case and if that is taken up as model case, bail would be granted in any other case of similar offence. That kind of apprehension may not be sustainable or justifiable unless there is a complete similarity with the facts of the case in the same locality before the judicial forum.

11.That apart, insofar as the fear and panic theory in the locality is concerned, as has been rightly pointed out by the learned counsel for the petitioner, except three lines stated in the ground of detention, the 2nd respondent has not stated anything about the ground reality as to how the 2nd respondent has come to the subjective satisfaction of the situation that was prevailing at that time in that locality, which tend to make the order of detention against the detainee.



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12. These circumstances, which we have discussed herein above, make us to come to a conclusion that the two grounds mainly taken up by the 2nd respondent to pass the impugned detention order may not be sustainable in the eye of law, in view of the aforesaid reasons.

13. In view of the above, the impugned detention order passed by the 2nd respondent in Cr.M.P.No.39 of 2022, dated 09.06.2022 is set aside. Therefore, this Habeas Corpus Petition is allowed and the 3rd respondent is hereby directed to release the detainee, namely, Prasanth, S/o.Murugesan, aged about 25 years, forthwith, unless his detention is required in connection with any other case.

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

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

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To

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- 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,
Tiruchirappalli District, Tiruchirappalli.
- 3.The Superintendent,
Central Prison, Tiruchirappalli,
Tiruchirappalli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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