



H.C.P.(MD)No.1201 of 2022 H.C.P(MD)No.1201 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

H.C.P.(MD)No.1201 of 2022

Kalisamy

.. Petitioner/Father of the
detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai-600009.

2. State represented by,
The District Collector and District Magistrate,
Tenkasi District,
Tenkasi-11.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to



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issue a writ of Habeas Corpus, calling for the records relating to the detention order passed by the second respondent in M.H.S.Confdl.No.69 of 2022 dated 07.07.2022 and to quash the same as illegal and direct the respondents to produce the body or person of the detenu, namely, Chermaraja, son of Kalisamy, aged 27 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel
For Mr.K.Prabhu

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

The father of the detenu, by name, Chermaraja, who is suspected of involving in the case of murder of one Sethupathy on 03.06.2022, is before this Court challenging the detention order on the ground of improper application of facts and non application of mind.



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2. The learned counsel for the petitioner would submit that it is an isolated case against the detenu Chermaraja against whom no bad antecedents has come to the notice of the sponsoring authority or detaining authority. Regarding the murder of Sethupathy, his mother who is the first informant has suspected one Krishnan. However, the police has altered the course of investigation by arresting Chermaraja and two others. In the detention order, the authority has referred a case to infer that there is mere possibility of granting bail to the accused. The said case is not similar to the facts of the case except the case arising under Section 302 IPC. In that case bail was granted since the prosecution has not filed final report within 90 days and by invoking Section 167 (2) Cr.P.C, bail was granted whereas in this case, investigation completed and final report also filed and the bail petition filed by the detenu Chermaraja was pending at the time of passing the detention order.

3. This Court, considering the fact that the detaining authority, while referring a case as a similar case to arrive at a conclusion that there is mere possibility of granting bail to the detenue Chermaraja, has not considered



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the fact that the bail granted in the similar case is due to the default of prosecution on merits. Therefore, on this ground, the detention order is quashed.

4. In fine, the Habeas Corpus Petition is allowed. The detention order passed in M.H.S.Confdl.No.69 of 2022 dated 07.07.2022, by the 2nd respondent, is set aside. Consequently, the detenu viz., Chermaraja, son of Kalisamy, aged 27 years, who is now detained in Central Prison, Palayamkottai, is directed to be released forthwith, unless his presence or custody or detention is required in connection with any other case.

[G.J.,J.] & [K.K.R.K.,J.]
21.02.2023

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

To
1.The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai-600009.



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

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



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**DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.**

PJL

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