



H.C.P.(MD) No.1232 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Gnanasundari

... 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,
Thanjavur District, Thanjavur.

3.The Superintendent of Prison,
Central Prison, Thiruchirappalli,
Thiruchirappalli 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 P.D.No.74 of 2022, dated 26.06.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenue or body of the detenue ie., the petitioner's husband, namely, Gounder @ Paramasivam, aged about 30 years, S/o.Sivanandam, now detained at the Central Prison, Tiruchirappalli, Tiruchirappalli District before this Court and set him at liberty forthwith.

For Petitioner : Ms.P.Krishnaveni

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, Gounder @ Paramasivam, aged about 30 years, S/o.Sivanandam. The detenu has been detained by the 2nd respondent by his proceedings in P.D.No.74 of 2022, dated 26.06.2022, 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.



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2.The detinue is the husband of the petitioner, who surrendered on 13.05.2022 in connection with the ground case, which is a case for the offence under Section 302 IPC and subsequently, Act 14 of 1982 has been slapped against the detinue on 26.06.2022 by the detaining authority. Against which, the present Habeas Corpus Petition is filed.

3.Ms.P.Krishnaveni, learned counsel appearing for the petitioner has stated that insofar as the ground case is concerned, the name of the detinue was not found in the First Information Report and he had no connection whatsoever with the alleged murder that has been taken place resulting in the ground case of 302 IPC.

4.It is the further ground of the petitioner's side that though they have referred to a similar case by adopting the similar case theory, apprehending that the detinue may get bail immediately, it is not a similar case based on the facts.



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5.The learned counsel for the petitioner would also rely upon a decision of another Division Bench of this Court in a connected petition in H.C.P.(MD)No.1229 of 2022 dated 24.01.2023, where this Court, having considered the fact that there has been no bad antecedent and also overt act attributed against him in the ground case did not support the reasoning of the detaining authority, had decided to quash the detention order and accordingly, the aforesaid petition was allowed. Relying upon these aspects and grounds urged on behalf of the petitioner for the detainee, the learned counsel seeks indulgence of this Court.

6.Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondents would submit that though there were originally six cases, which were pending against the detainee, out of which four cases ended in acquittal and the remaining two cases are still in live and the investigation is going on. Apart from that in the ground case, where it was gruesome murder taken place, the detainee is also one of the accomplice and when there has been specific overt act based on the statement given by the detainee, considering the propensity of the offence that has been taken place in public, the detaining authority has come to a



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conclusion that unless the immediate release of the detainee is prevented by slapping the provisions of the Act 14 of 1982, that would cause harm to the public peace, tranquility as well as the public order in that locality. Therefore, having such subjective satisfaction only, the detaining authority has slapped the provisions of the said Act and thereby, the impugned detention order has been passed. Hence, the learned Additional Public Prosecutor for the respondents wants to sustain the said order.

7.We have given anxious consideration to the submissions made by the learned counsel for both sides and perused the materials available on record.

8.This Court in an earlier occasion has considered and decided that the similar case theory need not be a similar set of facts, verbatim and in this context, it can be very useful to refer the judgment of the Division Bench of this Court made in ***H.C.P.(MD)No.244 of 2014 dated 18.08.2014*** in the matter of ***Mariappan Vs. District Collector and District Magistrate, Tirunelveli District, Tirunelveli and others***, where the Division Bench of this Court has stated the following:-



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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 overtacts against the accused involved.

9.However, insofar as this case is concerned, the earlier Division Bench of this Court considered the similar circumstances in H.C.P.(MD)No.1229 of 2022, where the reasons stated for taking a decision in favour of the detainee in that case was there has been no bad antecedent in respect of the said detainee. That apart, the overt act attributed against the said detainee in the ground case did not support the reasoning of the detaining authority.

10.In the present case also, the name of the detainee has not been found in the First Information Report, as the incident said to have taken place during the occurrence date was given by way of complaint by the wife of the deceased.



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11.Subsequently, by way of investigation the prosecution found the alleged involvement of the detainee also and thereafter, the detainee surrendered before the Court, where he was secured and arrested.

12.Insofar as the specific overt act with regard to the present detainee is concerned, it is the prosecution theory based on the statement given by the very same detainee himself and however, it is a matter of trial to be decided by the trial Court.

13.If we adopt the theory of the earlier Division Bench of this Court made in H.C.P.(MD)No.1229 of 2022 that the specific overt act attributed against the detainee does not support the reasoning of the detaining authority, the same logic would apply to the present case also, where the overt act attributed on the part of the prosecution against the detainee *prima facie* does not match with the reasoning given by the detaining authority. Therefore, on that limited reason and ground, we are inclined to take a decision in favour of the detainee. In the result, the impugned detention order passed by the 2nd respondent in P.D.No.74 of



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2022, dated 26.06.2022 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 detainee, namely, Gounder @ Paramasivam, aged about 30 years, S/o.Sivanandam, at free forthwith, if his confinement is no more required for any other cases.

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

14.03.2023

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,
Thanjavur District, Thanjavur.
- 3.The Superintendent of Prison,
Central Prison, Thiruchirappalli,
Thiruchirappalli District.

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



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AND

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