



HCP(MD)No.762 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.07.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.762 of 2023

M.Usha

.. Petitioner /Wife of the detenu

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary to the Government
Home Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Magistrate and District Collector
Pudukkottai District,
Pudukkottai.

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

.. Respondents



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Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the order made in P.D.O.No.41/2022 dated 07.10.2022 on the file of the second respondent and quash the same and consequently direct the respondents to produce the petitioner's husband namely, Murugesan, S/o.Vellaisamy, aged about 38 years, who is now detained as a detenu at Central Prison, Tiruchirappalli, or his corpus or body before this Court and set him at liberty forthwith.

For Petitioner : Mr.T.A.Punithan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH, J.)

The petitioner is the wife of the detenu viz., Murugesan, S/o.Vellaisamy, aged about 38 years. The detenu has been detained by the second respondent by his order in Detention Order in P.D.O.No.41/2022 dated 07.10.2022, holding him to be a "Drug Offender", as contemplated



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under Section 2(e) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Among other grounds, the detention order is mainly attacked on the ground that there is a delay in passing the order of detention. Learned counsel appearing for the petitioner strongly contended that though the detenu was arrested on 24.07.2022, the detention order was passed only on 07.10.2022 i.e., after a considerable delay of more than 70 days. Therefore, the detention order has to be set aside.

4. It is submitted by the learned Additional Public Prosecutor that on completion of investigation, charge sheet has been filed in Spl.S.C.No.65 of 2022 and the same is pending before the Mahila Court, Pudukkottai.



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5.As seen from the grounds of detention, it is clear that though the detenu was arrested on 24.07.2022, the order of detention came to be passed only on 07.10.2022 and hence, there is an abnormal delay in passing the order of Detention, which caused prejudice to the interest of the detenu.

6. Apart from the ground of delay, in the grounds of detention, the Detaining Authority has placed reliance on the report of the Sub Divisional Magistrate and the Revenue Divisional Officer, Illupur, whereby, a recommendation was made that the detenu is a deserving person for slapping the order of detention. However, the report of the Revenue Divisional Officer has not been served on the detenu. The said point has also been considered by this Court in the case of ***Mohamed Ovuthu Vs. The Principal Secretary to the Government and others*** (H.C.P.(MD)No.1305 of 2022, dated 29.03.2023), wherein, it is held as follows:

“4. What are the documents placed before the detaining authority are expected to be gone through by the detaining authority and based on his/her subjective satisfaction the invocation of the provisions of Act 14 of 1982 would be undertaken.



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5. However, in a complete deviation of the said method of invoking the provisions of Act 14 of 1982, in this case, the detaining authority i.e., the second respondent in the grounds of detention has stated that, a report was requested from the Sub-Divisional Magistrate and Revenue Divisional Officer, Aranthangi, and he has recommended and submitted a report that he is a deserving person for detention.

6. Hence, on the basis of the report submitted by the Sub-Divisional Magistrate / Revenue Divisional Officer, Aranthangi, and on the basis of documents submitted before the detaining authority, it has been ordered to detain the detenu for the purpose of protecting the life and belongings of general public.

7. Therefore, the main reason, according to the detaining authority, is the report submitted by the said officer, in this case, the Revenue Divisional Officer of Aranthangi.

8. When this was pointed out, the learned Additional Public Prosecutor appearing for the respondents has produced the relevant file as directed by this Court, where we were able to find out the report received from the said authority viz., Revenue Divisional Officer, Aranthangi, where he has given a



simple report about what the information he has gathered about the detenu and ultimately has made a recommendation that the detenu is a person against whom Act 14 of 1982 can be invoked and he can be branded as a Goonda.

9. However, the said report has not been furnished to the detenu and more over the said report has been taken as one of the main criteria to have the subjective satisfaction on the part of the detaining authority, which is outside the purview of the sponsoring authority's document placed before the detaining authority for his/her consideration.

10. When such extra documents or materials are taken into account by the detaining authority, other than the materials and documents furnished by or placed by the sponsoring authority, that itself is against the procedures contemplated under the provisions of the Act 14 of 1982.

11. Assuming that discretely certain informations had been collected by the detaining authority in order to have the subjective satisfaction, those informations collected, especially, the document like the report submitted by the Sub-Divisional Magistrate etc., which are relied upon by the detaining authority, those documents are necessarily to be furnished to the detenu and in this case nothing has been revealed and no



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document to that effect has been furnished or supplied to the detenu.

12. Therefore, we have no hesitation to hold that, the manner and method as well as the modus operandi adopted by the detaining authority to come to such a conclusion based on the alleged subjective satisfaction on her part to slap the provisions of Act 14 of 1982, against the detenu and ultimately declaring him as Goonda, within the said provisions of the Act is totally against the accepted procedure as contemplated under the provisions of Act 14 of 1982.

13. Therefore, for this reason alone, the impugned detention order would not sustain in the legal scrutiny. Hence, it is to be interfered with.”

7. We have gone through the entire materials placed on record. There is no satisfactory explanation offered by the Detaining Authority for the delay in passing the order of detention as well as the non furnishing of the report of the Revenue Divisional Officer and hence, the impugned order of detention is liable to be set aside.



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8. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.O.No.41/2022 dated 07.10.2022 passed by the second respondent is set aside. The detenu, viz., Murugesan, S/o.Vellaisamy, aged about 38 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (M.N.K.,J.)
14.07.2023

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

RM/RR



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To

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The Government of Tamil Nadu,
Home Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The District Magistrate and District Collector
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Pudukkottai.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR,J.

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