



H.C.P.(MD)No.1329 of 2022

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BEFORE THE MADURAL BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2023

Pronounced on : 27.04.2023

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

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Archana

.. Petitioner / Detenu

Vs.

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

2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Theni District.

3.The Superintendent of Prison,
Special Prison for Women,
Madurai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, by calling for the entire records connected with the Detention Order of the 2nd respondent made in Detention Order No.68/2022 dated 27.07.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name,



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Archana, wife of Selvam, aged about 36 years, now detained as “Drug Offender” at Madurai Special Prison for Women before this Court and set her at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **K.K.RAMAKRISHNAN, J**]

The detenu is the accused in Crime No.122/2022 registered for the offence under Section 8(c) r/w 20(b)(ii)(B), 29(1), 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, on the file of the Gudalur South Police Station. The police registered the above case against several persons, viz. Nanthakumar, Akilan, Perumal, Selvam, detenu Archana, Arun, Janathipathi. The police officer recovered 2 kgs of Ganja from A1 to A3 on 16.08.2022. The said Akilan gave confession that A4 Selvam instructed to buy Ganja from the detenu Archana and hence, she was arrayed as accused in the above case along with other accused and the detaining authority upon satisfaction of the request made by the Sponsoring Authority, slapped the impugned detention order against the



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detenu, vide Detention Order No.68/2022 dated 27.07.2022 under Section 2(e) of the Tamilnadu Act 14 of 1982 by branding her as “Drug Offender”.

2. Challenging the same, the detenu filed this Habeas Corpus Petition. The learned counsel for the petitioner, Mr.R.Alagumani submitted that in the ground case namely, seven persons were arrayed as accused and among the seven persons, Selvam and Akilan have number of previous cases in the similar type of offence and without any acceptable reason, the detaining authority invoked the detention order against the detenu alone, where the allegation against all the accused in the said crime number is same and there is no ground to segregate the detenu. Hence, the detention order is liable to be quashed on the ground of arbitrariness in exercising the power by submitting jurisdiction to the sponsoring authority.

3. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor submitted that as per the confession of the co-accused, the detenu only distributed Ganja to various persons and all the other



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accused are not similarly placed one and this detenu is the source of selling Ganja and hence, her case was treated as a special case and she alone slapped by the detaining authority. Even, the remaining accused, namely, Selvam and Akilan have involved in number of similar cases, they only involved in purchase of Ganja from the detenu Archana, and since the detenu only acted as a source point, the detaining authority arrived at a subjective satisfaction to invoke the Tamilnadu Act 14 of 1982 by branding her as a “Drug Offender” and the definition also has not demanded habituality and even a single case is enough to invoke the Tamilnadu Act 14 of 1982. In this case, she only supplied the entire contraband to various persons in that locality, which in turn, transmitted to the various drug peddler and finally reached the hands of the school going children and youngsters which affected the public order and hence, he prayed for dismissal of this Habeas Corpus Petition.

4. Heard both sides and perused the materials placed before this Court.



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5. This Court find some force in the argument of the learned counsel for the petitioner that the detaining authority, without applying his mind to the facts of this case, arrived at subjective satisfaction in passing the detention order against the detenu alone. Admittedly, even as per the documents annexed with the booklet supplied to the detenu, it is clear that Akilan and Selvam, from whom the contraband was recovered, have number of previous similar cases and they are the ultimate supplier of the drugs to the end consumer, more particularly, the students of that locality. In the said circumstances, the detaining authority, in the public interest, ought to have invoked the Tamilnadu Act 14 of 1982 to stop the entire episode of selling of Ganja, to all those who involved in that process, ie, from the source point to the selling point. Then only, there is some justification to invoke the Tamilnadu Act 14 of 1982.

6. In this case, even as per the confession of Akilan, he disclosed that Selvam was involved in previous occurrence in selling Ganja and Akilan also involved in the previous occurrence in selling Ganja. In the said circumstances, the invocation of the Tamilnadu Act 14 of 1982 against the petitioner without implicating the above said persons is total



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non-application of mind and reasoning of the detaining authority that if she come out on bail, she alone indulged in the activities of selling Ganja without involvement of the above accused Nos.1 and 2 is amount to lack of subjective satisfaction.

7. In the said circumstances, this Court did not find any extraordinary circumstances in the present factual events as narrated above to invoke the Tamilnadu Act 14 of 1982 against the detenu branding her as a “Drug Offender” without invoking the same to the remaining accused more particularly, against Akilan and Selvam.

8. The learned Additional Public Prosecutor answered to this Court that when the detaining authority stated in the detention order that she 'committed crimes continuously' would mean that she had number of previous cases relating to the other offences, ie., other than NDPS cases and hence the detaining authority applied his mind to pass the detention order. Quite diametrically opposite to that, he made a submission to the question raised by this Court that the single case is enough to invoke the Tamilnadu Act 14 of 1982 to brand the detenu as 'Drug Offender'. Hence,



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she was the main source of supply of Ganja and the remaining accused's role was limited to the extent to purchase and selling it to the local public.

9. Considering the facts and circumstances, this Court find that the detaining authority cannot act in hot and blow manner and hence, the invocation of the Tamilnadu Act 14 of 1982 against the petitioner in the particular facts and circumstances of the case is not in accordance with law. The detaining authority, without application of mind, passed the above detention order against the petitioner/detenu by submitting his jurisdiction to the dictation of the sponsoring authority. Hence, the detention is liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention made in Detention No.68/2022 dated 27.07.2022, passed by the second respondent is set aside. The detenu, viz. Archana, wife of Selvam, aged about 36 years, is directed to be released forthwith unless her detention is required in connection with any other case.



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11. It is needless to say that this Court keeping in mind that each criminal case rest on its own facts and more particularly, these type of detention cases rest on its own peculiar facts and the subjective satisfaction of the detaining authority in each case is different from each circumstances of the individual case. So, this Court confined a discussion of the principle of pick and choose only on the basis of the above factual circumstances without laying law on the point.

[R.S.K.,J.] & [K.K.R.K., J.]
27.04.2023

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

PJL

To

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

2. The District Collector and District Magistrate,
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3.The Superintendent of Prison,



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Special Prison for Women,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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**R.SURESHKUMAR, J.
and
K.K.RAMAKRISHNAN, J.**

PJL

**Pre delivery Order made in
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27.04.2023