



H.C.P.(MD) No.1361 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.1361 of 2022

M.Rejina Begam

... Petitioner / Mother of Detenu

Vs.

- 1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
O/o. The District Magistrate and District Collector,
Pudukottai.
- 3.The Superintendent of Prison,
Central Prison,
Trichy.
- 4.The Inspector of Police,
Manamelkudi South Police Station,
Pudukkottai District.

...Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records connected with the detention order in P.D.O. No.35/2022 dated 22.07.2022 on the file of the Respondent No.2 and quash the same as illegal and direct the Respondents to produce the body or person of the Petitioner's son namely Mohamed Yunus aged about 29 years son of Mohamed Ismail, now confined at Central Prison, Trichy, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.C.Jeya Prakash
for Mr.R.C.Paul Kanagaraj

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

This Habeas Corpus Petition has been filed to call for the records connected with the detention order in P.D.O. No.35/2022 dated 22.07.2022 on the file of the Respondent No.2 and quash the same as illegal and direct the Respondents to produce the body or person of the Petitioner's son namely Mohamed Yunus aged about 29 years son of Mohamed Ismail, now confined at Central Prison, Trichy, before this Hon'ble Court and set him at liberty forthwith.



2. We have heard Mr.C.Jeya Prakash, learned counsel appearing for the petitioner and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor, appearing for the respondents.

3. The learned counsel appearing for the petitioner, among various grounds, has projected one as a major ground, under which, he pointed that, normally within the purview of the provisions of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum grabbers and Video Pirates Act, 1982 (hereinafter referred to as Act 14 of 1982) detention order would be passed by the detaining authority solely on the basis of the report / request / recommendation submitted by the sponsoring authority from the concerned police or district concerned.

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.



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 District Collector, Nagapattinam, 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 District Collector, Nagapattinam, 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 District Collector, Nagapattinam.

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., District Collector, Nagapattinam, 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 District Collector, Nagapattinam 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 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.

14. In the result, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in P.D.O. No.35 of 2022



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dated 22.07.2022, is set aside. Consequently, the detenu, namely, Mohamed Yunus, son of Mohamed Ismail, aged about 29 years, who is now detained at Central Prison, Tiruchirappalli, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

(R.S.K., J.) & (K.K.R.K, J.)
29.03.2023

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

To

- 1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
O/o. The District Magistrate and District Collector,
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AND
K.K.RAMAKRISHNAN, J.

SJ

- 4.The Inspector of Police,
Manamelkudi South Police Station,
Pudukkottai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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