



HCP(MD)No.1364 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.02.2023

CORAM

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

H.C.P.(MD)No.1364 of 2022

Radha

.. Petitioner /Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in B.C.D.F.G.I.S.S.V.No.52 of 2022, dated 25.07.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the body or person of the detenu by name



HCP(MD)No.1364 of 2022

Radha, aged about 42 years, W/o.Eswaran, 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

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

This Habeas Corpus Petition is filed by the detenu viz., Radha, aged about 42 years, W/o.Eswaran,. The detenu has been detained by the second respondent, by his order in B.C.D.F.G.I.S.S.S.V.No.52 of 2022, dated 25.07.2022 holding her to be a "Drug Offender", as contemplated under Section 2(e) of 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.



HCP(MD)No.1364 of 2022

3.The petitioner along with one Panjavarnam was found in possession of 22 Kgs of ganja for sale to public and hence, a case has been registered against them. She was arrested on 10.06.2022 and the detention order was passed on 27.02.2022.

4.The learned counsel for the petitioner submitted that the order that was relied upon by the detaining authority does not pertain to a similar case and hence, the detention order suffers from non-application of mind.

5.The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. The learned Additional Public Prosecutor, on instructions, submitted that investigation was completed and final report was filed before the Sub-Court for NDPS Act, Madurai, in C.C.No.1128 of 2022 and the case is ripe for trial.

6.This Court, on perusing the detention order, finds that if the detenu is not detained preventively, near possibility of getting bail and if she released on bail, she will indulge in similar activities. In a similar case, bail was granted on the ground that the investigation was completed and final



HCP(MD)No.1364 of 2022

report was not filed within the statutory period, whereas, in this case, final report has been filed within the time. It is, therefore, clear that this order relied upon by the detaining authority cannot be considered to be a similar case and hence, the detention order suffers from non application of mind.

7.The judgment of the Hon'ble Supreme Court in ***Rekha v. State of Tamil Nadu ((2011) 5 SCC 244)*** has categorically held in the judgment that the accused persons, who are similarly placed being granted bail by the same Court or by a higher Court, cannot be a ground for the detaining authority to come to such a subjective satisfaction without there being any materials to substantiate the same. This by itself reflects non application of mind on the part of the detaining authority. Therefore, the order of detention is liable to be interfered with. As far the inference is that if she is released on bail there is possibility of involving in similar offence, this Court finds no material to find such inference.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.S.V.No.52 of 2022, dated 25.07.2022 passed by the second respondent is set aside. The detenu, Radha, aged about 42



HCP(MD)No.1364 of 2022

years, W/o.Eswaran, is directed to be released forthwith unless his detention is required in connection with any other case.

(G.J.,J.) (K.K.R.K.,J.)
16.01.2023

NCC :Yes/No

Index:Yes/No

Internet:Yes/No

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
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Special Prison for Women,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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