



HCP(MD)No.923 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.09.2023

CORAM

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

H.C.P.(MD)No.923 of 2023

Venkatesan

.. Petitioner /
father of the detenu

Vs.

- 1.State rep. by
Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009.
- 2.The District Magistrate and District Collector
Tenkasi District, Tenkasi.
- 3.The Superintendent of Police,,
Tenkasi District, Tenkasi.
- 4.The Superintendent of Prison,
Central Prison, Palayamkottai
Tirunelveli District.
- 5.The Inspector of Police,
Alwarkurichi Police Station,
Tenkasi District

.. Respondents



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PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the records in connection with the detention order passed by the second respondent dated 28.02.2023 in M.H.S.Confdl. No.16/2023 against the petitioner's son Durgaisivasakthi, aged 21 years, son of Venkatesan, who is placed under detention at Central Prison, Palayamkottai and set aside the detention order and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.D.Venkatachalam

For Respondents : Mr.A.Thiruvadikkumar
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz.,Durgaisivasakthi, aged about 21 years, S/o.Venkatesan. The detenu has been detained by the second respondent by his order in M.H.S.Confdl. No.16/2023 dated 28.02.2023 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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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. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that the detaining authority, had inferred that if the detenu comes out on bail, there is every possibility of the detenu indulging in further activities in future, which is bereft of particulars and on that score, the detention order is liable to be interfered with.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.

5. The detaining authority, while recording the detenu's involvement in the sole ground case in Crime No.26/ 2023, had observed that that there is a real possibility of the detenu coming out on bail, since bails are being granted by the appropriate Courts in such cases and had



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referred to a similar case, wherein, bail was granted to Sudalaimani in CrI.M.P.No.686/2020 dated 09.11.2020 by the Sessions Judge, Special Court for POCSO Act cases, Tirunelveli. While observing so, the detaining authority had stated that if the detenu comes out on bail, he will indulge in further activities in future, which will be prejudicial to the maintenance of the public order. When the detenu has involved himself in solitary case, which is the ground case and no reference has been made to any other adverse cases, on what basis the detaining authority had apprehended that the detenu would indulge in further activities in future is not known.

6.A co-ordinate Bench of this Court, in the case of ***Jebasta @ Jebasta Gnanamalar Vs. The State of Tamil Nadu and others*** passed in ***H.C.P.(MD).No.1815 of 2022 vide order dated 21.02.2023***, had an occasion to deal with the similar aspect in the following manner:

“4. The possibility of releasing the accused on bail was imminent and if he is released on bail, his presence likely to cause prejudice to the public peace and therefore, the preventive detention order been slapped after due consideration of merit and careful consideration of relevant records. It is stated in the counter that recourse in normal



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criminal law effectively preventing him from indulging in such activity in future which are prejudice to the maintenance of the public order. The detaining authority has arrived at such a conclusion based on the sole and solitary case against the petitioner that too, arising out of a property dispute which is purely civil in nature and except this one case, there is no adverse record against the detenu to infer that he had been indulging in such activity in the past or he will indulge in such activity in future. Mere apprehension that he will indulge in such activity in future is not suffice to invoke the provision of Act 14 of 1982. There must be some prima facie material to arrive at such conclusion. In this case, this Court finds that no such material. Therefore for bereft of supportive documents, the detention order is vitiated.”

Thus, when the detenu did not have any previous or adverse cases as per the detention order, the subjective satisfaction arrived at by the detaining authority, to the effect that the detenu is likely to indulge in further activities in future, is baseless and would amount to non-application of mind. Hence, the impugned order of detention is liable to be quashed.

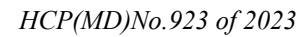


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8. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl. No.16/2023 dated 28.02.2023 passed by the second respondent is set aside. The detenu, viz., Durgaisivasakthi, S/o.Venkatesan, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (M.N.K.,J.)
25.09.2023

NCC :Yes / No
Internet : Yes
RR



1. The Secretary to Government
Home, Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009.
2. The Joint Secretary
Public Law and Order
Secretariat, Chennai.
3. The District Magistrate and District Collector
Tenkasi District, Tenkasi.
4. The Superintendent of Police,,
Tenkasi District, Tenkasi.
5. The Superintendent of Prison,
Central Prison, Palayamkottai
Tirunelveli District.
6. The Inspector of Police,
Alwarkurichi Police Station,
Tenkasi District
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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and
M.NIRMAL KUMAR,J.

RR

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