



H.C.P.(MD) No.1413 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Kamalam

... Petitioner / Mother of the Detenu

Vs.

1.The State of Tamil Nadu,

Represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat, Chennai- 600 009.

2.The District Collector and District Magistrate,

Office of the District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.

3.The Superintendent of Prison,

Central Prison, Palayamkottai,
Tirunelveli 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 entire records relating to the impugned detention order of the 2nd respondent in H.S.(M)Confdl.No. 159/22 dated 02.08.2022 and quash the same and direct the respondents to produce the body or person of the detenu, namely, Maya, S/o.Sudalaikannu, aged about 42 years, now confining at Central Prison, Palayamkottai, Tirunelveli and set him at liberty.

For Petitioner : Mr.A.Robinson,
For Mr.T.Balakrishnan
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu, namely, Maya, S/o.Sudalaikannu, aged about 42 years. The detenu has been detained by the 2nd respondent by his proceedings in H.S.(M)Confdl.No.159/22, dated 02.08.2022, 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. Act 14 of 1982 has been slapped against the detenu, who has been declared as 'Sexual Offender' within the meaning of the said Act. The detention order has been passed against him on 02.08.2022. With regard to the subjective satisfaction of the detaining authority, it has been stated in the grounds of detention that already one bail application had been filed on behalf of the detenu, which was rejected. Subsequently, another bail application in Cr.M.P.No.889 of 2022 on 13.07.2022 and also one more bail application in Cr.M.P.No.961 of 2022 on 28.07.2022 had been filed on behalf of the detenu. If these are taken up by the Court concerned for consideration, there is every possibility of the detenu coming out on bail, as in similar case, such a bail was granted in Cr.M.P.No.306 of 2019, dated 24.01.2019 by the District Mahila Court, Thoothukudi. Therefore, by relying upon these aspects, the detaining authority having subjective satisfaction has come to the conclusion that Act 14 of 1982 can be slapped against the detenu, accordingly, the detention order has been passed, which is impugned herein.



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3.However, the fact remains that the first bail application in Cr.M.P.No.871 of 2022 and second application in Cr.M.P.No.889 of 2022, admittedly, had been filed on behalf of the detenu as stated by the learned counsel for the petitioner, however, insofar as Cr.M.P.No.961 of 2022 is concerned, it had not been filed on behalf of the detenu or by the detenu and it had been filed by another accused ie., A2 in the ground case. However, this has also been considered as if filed on behalf of the detenu and is pending and the detaining authority has come to such a subjective satisfaction.

4.However, the fact remains that the bail application in Cr.M.P.No.961 of 2022 has never been filed on behalf of the detenu and copy of the same has also not been furnished to the detenu and therefore, it clearly shows non-application of mind on the part of the detaining authority, as the detaining authority relied upon the bail application filed by another accused not by the detenu and come to the subjective satisfaction. Therefore, we feel *prima facie* that such a subjective satisfaction arrived at by the detaining authority may not be justifiable.



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5. Even though the learned Additional Public Prosecutor for the respondents has made an attempt to justify this by citing that it is only a clerical mistake that Cr.M.P.No.961 of 2022 has been mentioned along with Cr.M.P.No.889 of 2022, which has been admittedly filed on behalf of the detenu, we are not impressed with the said submission made by the learned Additional Public Prosecutor for the respondents, because in the paper booklet supplied to the detenu at page No.103, details with regard to the bail application in Cr.M.P.No.961 of 2022 has been given. Therefore, they are under mistaken impression that Cr.M.P.No.961 of 2022 has been filed on behalf of the detenu, but factually it is incorrect and it is not mere typographical error/clerical mistake that has occurred in the grounds of detention but it has been deliberately made in the order, which has not been noticed by the detaining authority that shows non-application of mind on the part of the detaining authority.

6. Therefore, on this simple ground, the impugned order, in the considered opinion of this Court, would not sustain under the law. Hence, the impugned detention order passed by the 2nd respondent in



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H.S.(M)Confdl.No.159/22, dated 02.08.2022 can be set aside, accordingly, it is set aside. Hence, this Habeas Corpus Petition is allowed. As a sequel, the 3rd respondent is hereby directed to set the detenu, namely, Maya, S/o.Sudalaikannu, aged about 42 years, at free, if his presence in the jail is not required for any other cases.

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

27.04.2023

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

MYR
To

- 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,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli District.



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4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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AND

K.K.RAMAKRISHNAN, J.

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