



HCP(MD)No.1432 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.03.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**  
and  
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

H.C.P.(MD)No.1432 of 2022

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Rajakodi

.. Petitioner

Vs.

State rep.by

1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St.George,  
Chennai-600009.

2.The Commissioner of Police,  
Tiruchirappalli City,  
Tiruchirappalli.

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

.. 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 of the Respondent No.2 in C.No.89/Detention/C.P.O/T.C/2022



HCP(MD)No.1432 of 2022

dated 29.06.2022 and quash the same and directs the respondents to produce the body or person of the detenu by name Rajakodi wife of Palraj, aged about 54 years, now detained as "Drug Offender" at Trichy Special Prison for Women before this Court.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar  
Additional Public Prosecutor

### **ORDER**

[Order of the Court was made by **R.SURESH KUMAR, J.**]

This Habeas Corpus Petition has been filed to quash the detention order of the respondent No.2 in C.No.89/Detention/C.P.O/T.C/2022 dated 29.06.2022 and direct the respondents to produce the body or person of the detenu by name Rajakodi wife of Palraj, aged about 54 years, now detained as "Drug Offender" at Trichy Special Prison for Women before this Court.

2. The petitioner/detenu was arrested relating to a drug case on 27.04.2022, which has been shown as ground case, followed by which, Act 14 of 1982 has been invoked against her and the order of detention has been slapped against her, challenging which, she is before this Court.



HCP(MD)No.1432 of 2022

WEB COPY

3. Heard the learned counsel for the petitioner, who would submit that insofar as the alleged detention in the ground case is that the detenue/petitioner has been in possession of 30.500 kgs of Ganja, which is a commercial quantity and in this context, the reason cited by the detaining authority that the detenue/petitioner may come out on bail and because of likelihood of the petitioner/detenue to come out on bail, it became necessitated for slapping Act 14 of 1982 against her and that is how the detention order has been passed. However, this position makes it clear that there has been complete non application of mind on the part of the detaining authority because under Section 37 (1)(b) of the NDPS Act (hereinafter referred to as 'the Act') only the detenue has to substantiate her case for seeking grant of bail that no Court will entertain her bail plea due to statutory bar under Section 37 (1)(b) of the Act clearly show that the person, who is in possession of more than 20 kgs of Ganja, since in a commercial quantity, is not entitled to get bail. When that being the position, there was no likelihood of the petitioner detenue coming out on bail, in view of the ground case, where the alleged offence was that the petitioner detenue was having commercial quantity of Ganja and therefore, by sheer non



*HCP(MD)No.1432 of 2022*

application of mind, since the order of detention has been passed, the same is liable to be interfered with, he contended.

4. In support of his contention, the learned counsel has placed reliance upon the Division Bench order of this Court in HCP (MD) Nos.882 and 883 of 2019 dated 24.01.2020 in the matter of Revathi v. The Principal Secretary to Government and others, where a similar point has been considered.

5. We have also heard the learned Additional Public Prosecutor, who would submit that even though the NDPS substance, ie., Ganja, which had been in possession of the petitioner/detenué was commercial quantity, that alone cannot be the criteria for the detaining authority to come to the conclusion to slap the detention order. He would also submit that investigation was over and charge sheet had been filed against the detenué reiterating the alleged offence against her, he contended.

6. We have taken note of the said submissions made by both sides and the principle as stated in the said judgment in Revathi's case, cited supra,



where the Division Bench in Paragraph No.7 has dealt with similar issue and passed the following order:

“7.Secondly, the detenus have not moved any bail application after the dismissal of CrI.M.P.Nos.2904 and 2906 of 2019, and more particularly, both of the detenus were allegedly found in possession of 24 kgs. of ganja along with another co-accused. Section 2(viia) of the NDPS Act clearly defines the commercial quantity that means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. In this regard, it is also necessary to refer to the Notification dated 19.10.2001 issued by the Central Government. In the table shown thereunder, Serial No.55 clearly shows 6/9 <http://www.judis.nic.in> H.C.P(MD)No.882 and 883 of 2019 that if anyone is found in possession of 20 Kgs. of ganja, he/she is in possession of commercial quantity. Therefore, when 20 kgs. is shown as commercial quantity as per the Notification dated 19.10.2001 issued by the Central Government, the detenus may not be in a position to approach the trial Court, provided the respondents are in a position to substantiate that at the time of detention, the detenus were in possession of commercial quantity, namely, more than 20 kgs. But, in the present case, the detenus were jointly found in possession of 24 kgs. In the light of Section 37(1) (b) of the NDPS Act, unless the detenu is able to substantiate his case before seeking grant of bail that he was not in possession of commercial quantity, no court will entertain the bail plea due to statutory bar. Further, Section 37 read with 2 (viia) of the NDPS Act clearly shows that a person, who is in possession of more than 20 kgs. of ganja, is not entitled to get bail. Therefore, the impugned detention orders, passed by the second respondent on the ground that there is a possibility of the detenus coming out on bail by filing a bail petition, since, in similar cases, bail



HCP(MD)No.1432 of 2022

are granted, is liable to be quashed for want of subjective satisfaction.”

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7. When that being the position, the same principle can very well be applied to the case of the petitioner/detenué also, where the very statutory bar would apply against her. Therefore, coming out on bail is not a mere possibility and therefore, on such reason if the impugned detention order is passed against the petitioner/detenué that arises out of non application of mind. Therefore, on that ground, we are inclined to allow this Habeas Corpus Petition.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order C.No.89/Detention/C.P.O/T.C/2022 dated 29.06.2022 passed by the second respondent is set aside. The detenué, viz., Rajakodi, W/o.Palraj, aged about 54 years, is directed to be released forthwith unless her detention is required in connection with any other case.

(R.S.K.,J.) (K.K.R.K.,J.)  
24.03.2023

Index : Yes/No

Internet : Yes

**RR**



*HCP(MD)No.1432 of 2022*

To

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



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*HCP(MD)No.1432 of 2022*

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**HCP.(MD)No.1432 of 2022**

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