



HCP(MD)No.983 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.983 of 2023

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... Petitioner

vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in H.S(M).Condfl.No.73/2023 dated 14.06.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Patturaja, son of Florance, aged about 36 years, now detained as 'Drug Offender' at Palayamkottai Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.P.Samuel Gunasingh
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition [hereinafter referred to as 'HCP' for the sake of convenience] has been filed on 02.08.2023 by the wife of the detenu assailing a preventive detention order dated 14.06.2023 bearing reference H.S(M).Condfl.No.73/2023 [hereinafter referred to as 'impugned preventive detention order'] passed by the 2nd respondent.

2. The petitioner has filed an affidavit in support of the HCP wherein she has raised various grounds against the impugned preventive detention order.

3. Today, in the final hearing board, the learned counsel for the petitioner projected his arguments that the detaining authority before passing the impugned preventive detention order did not apply his mind. Further, he submitted that the subjective satisfaction arrived at by the



detaining authority regarding the imminent possibility of the detenu being enlarged on bail is without any material or evidence. In this regard, learned counsel drew our attention to a portion of paragraph 8 of the grounds of impugned preventive detention order which reads as follows:

'... I am also aware that accused Patturaja has tried to file a bail petition before the appropriate court in the ground case registered in Tharuvaikulam Police Station Crime No. 52/2023 Section U/s. 8 (c) r/w 20(b) (ii) (B) NDPS Act 1985. I am also aware that in a similar case registered Thoothukudi South Police Station Cr.No.686/2019 u/s 8(c) r/w 20(b)(ii) (B) N.D.P.S. Act 1985 bail was granted to accused Mariganesh Samgnanaraj before the Court of Principal Special Court for NDPS Act Cases, Madurai vide CrI.M.P. No.4451/2019 dt.19.11.2019. Hence, I infer that it is very likely of his coming out on bail in the above ground case by filing bail before the appropriate courts, since bails are granted by Court in such cases. ...'

4. Per contra, the learned Additional Public Prosecutor has submitted that the detaining authority (2nd respondent) only after perusing the entire documents and materials submitted by the sponsoring authority arrived at the subjective satisfaction. He further submitted that the



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detaining authority has perused the similar case bail order and only after satisfaction, he has passed the impugned preventive detention order. Therefore, the impugned preventive detention order is to be sustained. Accordingly, he prayed for dismissal of the HCP.

5. We have considered both side submissions. We have perused paragraph 8 of the grounds of impugned preventive detention order wherein it is stated that the detenu has one adverse case and one ground case. The adverse case has been registered on 03.10.2022 in Crime No. 142/2022 on the file of Soorangudi Police Station, for alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 29(1) & 25 of 'The Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of brevity]. In the said case, it is stated that 540 kg. of ganja was seized from the detenu and his associates which is classified as 'Commercial Quantity' as per Section 2(viia) read with Sl.No.55 of the Notification issued by the Central Government under NDPS Act. In the grounds of detention, it has been stated that detenu was formally arrested in Crime No.142/2022 on 25.05.2023 in Thoothukudi District Jail at Perurani by the Investigation Officer and the case is under investigation.



6. The ground case is registered on 16.05.2023 in Crime No. 52/2023, under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act, for the alleged offence of possessing 1400 grams banned cannabis which denotes that the detenu possessed intermediate quantity. It is apposite to mention here Section 37 of NDPS Act which reads as follows:-

37. Offences to be cognizable and non-bailable. -- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure,



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1973 (2 of 1974) or any other law for the time being in force on granting of bail.

7. There is no material or evidence available on record to say that the detenu has been enlarged on bail in the adverse case. In the adverse case, if bail application is filed, it should pass the rigour stated under Section 37(1)(b)(ii) of NDPS Act for bail to be granted. This rigour is not available to the ground case. The detaining authority has not considered the rigour under Section 37 of NDPS Act which is applicable to the adverse case but not the ground case.

8. Though this vital point ought to have been considered, the detaining authority failed to do so. Thus, non-application of mind is apparent on the face of record. Therefore, the subjective satisfaction recorded by the Detaining Authority is a flawed exercise. If it is flawed, the consequence is the impugned preventive detention order gets vitiated and deserves to be interfered with and set aside.

9. In the result, this HCP is allowed and the impugned preventive detention order passed by the 2nd respondent bearing reference H.S(M).Condfl.No.73/2023 dated 14.06.2023 is set aside and the detenu



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Thiru.Patturaja, aged about 36 years son of Thiru.Florance, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S., J.) (R.S.V., J.)
18.10.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai.

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2. The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

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

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

5. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

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ORDER MADE IN
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DATED : 18.10.2023