



H.C.P.(MD) No.1538 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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J.Rajeshwari

... Petitioner / Mother of the
Detenue

Vs.

1.The Additional Chief Secretary to Government,
Home,Prohibition and Excise Department,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.

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

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Habeas Corpus, calling for the entire records, connected with



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the detention order of the respondent No.2 in detention order No.65/2022 dated 07.07.2022 and quash the same and direct the respondents to produce the body or person of the detenue by name Rajadurai, Son of Jeyakodi, aged 22 years, now detained in Madurai Central Prison before this Court and set him at liberty.

For Petitioner : Mr.I.Sabeer Mohamed

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

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

This Habeas Corpus Petition has been filed seeking for a direction calling for the records connected with the detention order of the second respondent in detention order No.65/2022 dated 07.07.2022 and quash the same and direct the respondents to produce the body or person of the detenue by name Rajadurai, Son of Jeyakodi, aged 22 years, now detained in Madurai Central Prison before this Court and set him at liberty.



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2. According to the respondent, there has been a solitary case which is a ground case against the detainee for the alleged offence punishable under Section 302 IPC. In this regard, the background facts as projected by the learned counsel appearing on behalf of the detainee is that for the said ground case, the detainee was arrested on 29.05.2022 thereafter, Act 14 of 1982 was slapped on the detainee and the impugned detention order was passed on 07.07.2022.

3. In this context, it is the further contention of the learned counsel for the petitioner that, according to the prosecution, the murder was taken place on 15.05.2022 and the body was recovered on 17.05.2022. Based on which, the Village Administrative Officer concerned has given a complaint as suspicious death. Therefore, FIR was registered under Section 174 Cr.P.C., thereafter, after seeing the body, the mother of the victim said to have given a complaint which alone was acted according to the prosecution, therefore, the respondent police converted the case into Section 302 IPC. However, a copy of the said crucial complaint given by the mother of the victim dated 21.05.2022, has not been furnished to the detainee.



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4. Apart from this ground, some other grounds have been raised by the learned counsel appearing on behalf of the detainee that some of the copies supplied to the detainee are not legible and some of them are in English, but we have considered that insofar as the non-giving of the complaint dated 21.05.2022 given by the mother of the victim is concerned, the police converted the offence into Section 302 IPC and they proceeded the investigation. It is only a solitary case or ground case, for the purpose of coming to the conclusion by the detaining authority that the detainee could be declared as Goonda and that is how, the impugned detention order has been passed. Whether the non-giving of the copy of the complaint dated 21.05.2022 given by the mother of the victim to the detainee would be a fatal to the entire proceedings, is the only question to be considered in this matter.

5. In this context, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondents has submitted that whether the Village Administrative Officer has given a complaint or the mother of the victim has given a complaint, that is only the content of information. Based on which, though initially FIR was filed under Section 174 Cr.P.C.,



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subsequently, it has been converted into the alleged offence punishable under Section 302 IPC and therefore, it is for the prosecution to deal with and in this regard, if there is any grievance for the detainee, he could press for the same only before the trial where the final charge sheet had already been filed, he contended.

6.The learned Additional Public Prosecutor would also submit that the victim belongs to a particular community and the detainee belongs to a particular community that has also been taken note of by the detaining authority as one of the reasons or grounds for slapping the Goonda Act against the detainee.

7.We have considered the rival submissions made on either side.

8.Insofar as the only solitary ground case is concerned, originally it was a case of suspicious death therefore, it was registered under Section 174 Cr.P.C., subsequently, converted into Section 302 IPC, based on their own investigation, but because of the complaint given by the mother of the victim, dated 21.05.022. Therefore, it is a relevant document. In the considered opinion of this Court, the same ought to have been supplied to



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the detenue.

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9. That apart, even though it was stated by the learned Additional Public Prosecutor that the victim as well as the detenue belong to different community in that locality, however, there has been no whisper in the grounds mentioned in the detention order about the likelihood of any communal clash because of the alleged case of 302 IPC and therefore, this Court is not able to find anything in this regard in the said grounds stated by the detaining authority.

10. Therefore, on these two grounds, the impugned detention order passed by the detaining authority, in the considered opinion of this Court, would not stand in the legal scrutiny. Hence, it is liable to be quashed. As a result, the impugned order of detention is set aside. As a sequel, there shall be a direction to the third respondent to set the detenu at free, if he is not further more required for any other case. Accordingly, Habeas Corpus Petition is allowed.

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

10.03.2023

NCC : Yes / No

Index : Yes / No



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Internet : Yes / No

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To

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