



HCP(MD)No.1585 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.07.2023

CORAM

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

H.C.P.(MD)No.1585 of 2022

Jayasurya

.. Petitioner /Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
St.George Fort,
Chennai - 9.

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

3.The Superintendent of Police,
Theni District,
Theni.

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

5.The Inspector of Police,
Kadamalaikundu Police Station,
Theni 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 pertaining to the order of detention order passed by the second respondent vide his proceedings in Detention Order No.76/2022 dated 16.08.2022 and quash the same as illegal and consequently direct the respondents herein to produce the detenu Jayasurya, S/o.Jayapal (Male, aged 23 years) before this Court and set him at liberty from the detention at Central Prison, Madurai.

For Petitioner : Mr.A.Kesavan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the detenu viz., Jayasurya, aged about 23 years, S/o.Jayapal. The detenu has been detained by the second respondent by his order in Detention Order No.76/2022 dated 16.08.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) 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 there are no adverse cases against the detenu.

4. The learned Additional Public Prosecutor has not filed his counter. However, he strongly opposed the Habeas Corpus Petition.

5. Admittedly, there are no adverse cases implicating the detenu for similar of other cases. While that being so, the detaining authority, had observed in the detention order that the detenu herein has committed crimes continuously and thereby acted in a manner prejudicial to the maintenance of public order. We are unable to comprehend as to how the detaining authority can come to such a conclusion that the detenu has been



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continuously committing crimes, when even according to him, there are no previous or adverse cases.

6. A co-ordinate Bench of this Court in the case of ***Muniyammal and another Vs. The State of Tamilnadu represented by its Additional Chief Secretary to Government, Home, Prohibition and Excise Department and others*** in ***H.C.P.(MD).Nos.1643 and 1653 of 2022 vide order dated 02.06.2023***, had dealt with a similar situation and held that the subjective satisfaction arrived in such circumstances may not be justifiable. The relevant portion of the order reads as follows:

“7. Though such an attempt was made by the learned Additional Public Prosecutor appearing for the respondents, we are not impressed with the same because if a detaining authority has come to a subjective satisfaction, that too branding a person as a Goonda on the basis of his continuous involvement of crime and if it is averred in the grounds of detention, there must be some materials backing such a decision or conclusion arrived at by the detaining authority and without any such material, as no such previous crime has been registered against these two detenues, such a conclusion arrived by the detaining authority to have a



subjective satisfaction may not be justifiable, therefore, on that ground we feel that the impugned orders would not stand in the legal scrutiny.

7. The aforesaid extract is self-explanatory. Thus, the subjective satisfaction, which the detaining authority had arrived at, is not on a proper appreciation of facts of the case and therefore, the order itself cannot be sustained and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.76/2022 dated 16.08.2022 passed by the second respondent is set aside. The detenu, viz., Jayasurya, S/o.Jayapal, aged about 23 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.)
06.07.2023

NCC : Yes / No
Index : Yes / No
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6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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