



HCP(MD)No.1660 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.07.2023

CORAM

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

H.C.P.(MD)No.1660 of 2022

Enbavalli

.. Petitioner /Wife of the Detenu

Vs.

1.The State of Tamil Nadu,
represented by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

3.The Superintendent,
Central Prison,
Madurai.

4.The Inspector of Police,
Mayiladumparai Police Station,
Kadamalaikundu Circle,
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 records relating to the detention order passed by the second respondent in Detention Order on 13.09.2022 in Detention Order No.91/2022 and to quash the same and direct the respondents to produce the body or person of the detenu, Devendran, (aged 47 years), S/o.Muthusamy, before this Court and set him at liberty, now confined at Central Prison, Madurai.

For Petitioner : Mr.D.Rameshkumar

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz., Devendran, aged about 47 years, S/o.Muthusamy. The detenu has been detained by the second respondent by his order in Detention Order No.91/2022 dated 13.09.2022 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 many grounds have been raised in the petition, the learned counsel for the petitioner focussed his argument on the ground that the detaining authority was swayed by the fact that a bail petition may be filed before the competent Court by the detenu or his relatives in future.

4. The learned counsel for the petitioner further submitted that the subjective satisfaction that has been arrived at by the detaining authority at Paragraph No.5 of the order is not supported by any materials. Therefore, the same also suffers from non application of mind.

5. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench of this Court reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector, Tiruchirappalli District & another]**.



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6. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.

7. Even though several grounds have been raised in the petition filed before this Court, this Court is inclined to consider the main ground that has been focussed by the learned counsel for the petitioner.

8. While passing the impugned detention order, the detaining authority had stated that the detenu is in remand in District Jail, Theni in connection with Crime No.79/2022 and his remand period was extended upto 20.09.2022. It is further stated therein that the detenu has not filed a bail petition till date, but, however, they have received a secret information that the detenu or his relatives will file bail application before the competent Court very soon. Though the source of secret information may not be disclosed to the petitioner, the information as such ought to have been disclosed to the petitioner. The non supply of such a vital information may not be justifiable and hence, the detaining authority having arrived at the subjective satisfaction becomes questionable. At this point of time, it will



be relevant to take note of the Full Bench judgment, which has been referred
supra.

9. The relevant portions are extracted hereunder:

“24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with [Article 22](#) of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must



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10. It is clear from the above that where the detenu is in custody and he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it was based merely on the presumption made by the detaining authority, the same reflects non application of mind on the part of the detaining authority.

11. In view of the above, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.91/2022 dated 13.09.2022 passed by the second respondent is set aside. The detenu, viz., Devendran, S/o.Muthusamy, aged about 47 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.)
11.07.2023

NCC : Yes / No
Index : Yes / No
Lm/mbi



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