



H.C.P.(MD) No.2070 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.2070 of 2022

K.Eshwari

... Petitioner / Mother of detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

3.The Superintendent of Prison,
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 records pertaining to the



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impugned detention order passed by the 2nd respondent made in his proceedings in Detention Order No.72 of 2022 dated 27.07.2022 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the Detenu, namely, Siva @ Sivasakthi, S/o. Kennadey, Male, aged about 24 years, who is detained in Central Prison, Madurai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.A.Joseph Jerry

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

ORDER

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

The petitioner is the mother of the detenu. This Habeas Corpus Petition has been filed by her to call for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in Detention Order No.72 of 2022 dated 27.07.2022 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely, Siva @ Sivasakthi, S/o. Kennadey, Male, aged about 24 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty.



2. Heard Mr.A.Joseph Jerry, learned counsel appearing for the petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, appearing for the respondents.

3. The detenu in this case is one of the accused in Crime No.143 of 2022 on the file of the Rayappanpatti Police Station. According to the prosecution, it was a case of murder, therefore, charge sheet has been filed under Sections 147, 120(B), 109 and 302 I.P.C. Insofar as the prosecution case is concerned, except the circumstantial evidence, there has been no eye-witness. In similar circumstances, with regard to a subjective satisfaction as to whether if the detenus are set at liberty will be endangering to the maintenance of public order, a coordinate Bench of this Court in ***H.C.P. (MD) No.1276 of 2022*** by order ***dated 27.02.2023*** in the matter of ***Vijaya Shanthi v. The Principal Secretary and others*** has held as follows:-

“5.The learned counsel appearing for the detenu submitted that it is a solitary case against the detenu and it is a case of circumstantial evidence. Therefore, the apprehension is that on release of the detenu, he will indulge in future, which will be prejudicial to the maintenance of peace and public order, is without any basis and hence, the detention order is



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vitiated on the ground of non application of mind.

6.This Court, on perusing the papers relied on by the detaining authority to invoke Article 14 of 1982, found that except the confession statement of the witnesses, the statement of one witness, who seen the accused person and the deceased alive near a bar quarrelling, there is no other evidence directly implicating the detenu in this case. Further, the occurrence, even according to the prosecution, has taken place in a secret place without any eye witness to the occurrence and the petitioner has no adverse case against him. Fear or apprehension that there is a likelihood of getting bail and if the detenu comes out on bail, he will indulge in future activities, which prejudicial to the maintenance of peace, is highly unsustainable. Therefore, the detention order is liable to be quashed.”

4. As almost similar circumstances we are confronting in this Habeas Corpus Petition, as there is one solitary case, which has been shown as a ground case, which is a case of alleged murder, where also there are circumstantial evidence based on which the prosecution has build up the case and filed the charge sheet, when that being so, the subjective satisfaction as has been expressed by the detaining authority, whether is



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acceptable or not is the only question, for which, the answer has already been given in the said case. Therefore, following the said principle, we are inclined to allow this Habeas Corpus Petition.

5. In the result, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in Detention Order No. 72/2022 dated 27.07.2022, is set aside. Consequently, the detenu, namely, Siva @ Sivasakthi, son of Kennady, aged about 24 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

(R.S.K., J.) & (K.K.R.K, J.)
13.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.

SJ

- 2.The District Collector and District Magistrate,
Theni District,
Theni.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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