



H.C.P.(MD) No.121 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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V.Sankari

... Petitioner

-VS-

1.State of Tamil Nadu
rep.by the Principal Secretary
to Government
Home, Prohibition and
Excise Department
Secretariat, Chennai-600 009

2.The District Collector and
District Magistrate
Tenkasi District
Tenkasi

3.The Superintendent of Prison
Central Prison
Palayamkottai
Tirunelveli

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order in M.H.S.Confdl.No.78/2023, dated 08.11.2023, on the file of the second respondent and quash the same and direct the respondents herein to produce the body of the petitioner's husband, namely, Varatharajan @ Vajboy, son of Velkutti, aged about 29 years, now confined in Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the wife of the detenu viz., Varatharajan @ Vajboy, son of Velkutti, aged about 29 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.78/2023, dated 08.11.2023, holding him to be a "Goonda", as contemplated under Section 2(f) 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, learned counsel appearing for the petitioner would mainly focus his arguments on the ground of non-application of mind on the part of the Detaining Authority, while passing the impugned detention order. According to the learned counsel, the ground case is stated to have been happened on 17.10.2023, based on which a case in Alwarkurichi Police Station Crime No. 217 of 2023 was registered on the same day. Whereas, in order to substantiate the ground that the relatives of the detenu are taking steps to bring him out on bail, the Sponsoring Authority has relied on the statement of one Subramanian, which is stated to have been recorded on 06.10.2023, which is prior to the registration of the case in Crime No.217 of 2023. In this regard, no clarification has been sought for by the Detaining Authority, which exposes non-application of mind on the part of the Detaining Authority while passing the impugned detention order. Hence, on this ground, the present impugned detention order is liable to be set aside.



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4. Learned Additional Public Prosecutor appearing for the respondents strongly opposed the habeas corpus petition by filing his counter. He would submit that though the statement of one Subramian, which was recorded prior to the registration of the first information report, was relied on by the Sponsoring Authority, on that score alone, it cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and therefore prays for dismissal of the habeas corpus petition.

5. The ground case is said to have been taken place on 17.10.2023, for which a case in Alwarkurichi Police Station Crime No.217 of 2023 came to be registered on the same day. The detenu was arrested on 18.10.2023. However, at Page No.83 of the booklet, the Sponsoring Authority has placed a statement of Subramanian recorded on 06.10.2023. When the case in Crime No.217 of 2023 was registered only on 17.10.2023, the said statement of Subramanian could not have been relied as it was recorded on 06.10.2023, which shows non-application of mind on the part of the Detaining Authority while passing the impugned detention order. Therefore, the impugned detention order is liable to be set aside.



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6. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.78/2023, dated 08.11.2023, passed by the second respondent is set aside. The detenu, viz., Varatharajan @ Vajboy, son of Velkutti, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[A.D.J.C., J.] [K.R.S., J.]

29.04.2024

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

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To:

1.The Principal Secretary
to Government,
Home, Prohibition and
Excise Department,
State of Tamil Nadu,
Secretariat, Chennai-600 009.

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

K.RAJASEKAR, J.

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