



H.C.P.(MD).No.272 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.03.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

H.C.P.(MD).No.272 of 2024

K.Muthuselvi

.. Petitioner/Mother of the Detenu

Vs.

1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Govt. of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai – 9.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent,
Central Prison,
Madurai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the records pertaining to the proceedings of the 2nd respondent made in his proceeding in No. 47/BCDFGISSSV/2023 dated 08.06.2023 and quash the same and set he petitioner's son by name Krishnakumar S/o Kannan aged about 26 years at liberty from Central Prison, Madurai.



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3. A perusal of the records and the detention order, which is impugned in this writ petition, reveals that Krishnakumar, son of the petitioner, was detained on 08.06.2023 since the detaining authority being satisfied that his presence is dangerous to the maintenance of public peace. This inference is based on the information available on record.

4. Against the detenu, two adverse cases, one at the Sellur Police Station in Crime No.8 of 2020 for the offences under Sections 147, 148, 341, 294(b), 307, 506(ii) IPC altered into Sections 147, 148, 341, 294(b), 506(ii), 302, 149 IPC and Section 83(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and another adverse case registered by Karimedu Police Station in Crime No.189 of 2023 for the offences under Sections 147, 149, 294(b), 323, 324, 307 and 302 IPC pending.

5. In both the murder cases, he has been enlarged on bail. After being released from the jail, within 20 days, the detenu has again involved in the case in Crime No.522 of 2023 on the file of the Karimedu Police Station, for the offences under Sections 392 r/w 397, 506(ii) IPC and Section 25 (1-A)



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Arms Act, 1959. In the said context, while arriving at subjective satisfaction after referring to the ground case as well as adverse cases, the detaining authority had concluded that there is a likelihood of getting bail in the ground case also. To arrive at the said conclusion, the bail order of the Principal District Court, Madurai passed in CrI.M.P.No.5309 of 2021 is referred. In the case referred, the accused were arrested for the offences under Sections 392, 397 and 506(ii) IPC and Section 25(1)(a), 27(1) Arms Act, 1959 and the Court has granted bail to them. The detaining authority has observed that similar to that case, if the bail is granted in the ground case, the detenu may indulge in activities which will prejudice the maintenance of public peace.

6. The learned counsel while relying upon the order of this Court, which has quashed the detention order of the co-accused submitted that in this habeas corpus petition, the detenu should also be extended the same benefit.



7. This Court on perusing the order, finds that the subjective satisfaction of the detaining authority not base on one single factor. It is derived through multiple factors from the materials placed before him. The similar case referred to is only to draw an inference whether there is any likelihood of getting bail. The likelihood of getting bail alone is not a factor to invoke the detention order, which has led to the satisfaction that if the detenu is released on bail, he has propensity to indulge in crime which will prejudice the maintenance of public peace.

8. With great respect to the Bench which has quashed the detention order of the co-accused, we find the entire records connected with the detention order has not been brought to its notice of that Bench. The entire material which has been considered by the detaining authority to arrive at subjective satisfaction, is not only the likelihood of getting bail, but also other factors particularly, the adverse cases, both for major offences punishable under Section 302 IPC and the conduct of the detenu who had indulged in the ground case, within 20 days after getting bail.



9. The similar case referred not to be compared juxtaposition with the ground case under consideration. The offence and *modus operandi* adopted by the accused person to execute the offence are the criteria to compare. Granting bail by a Court is based on the several factors. The detaining authority need not go by those factors. *Prima facie* satisfaction of the detaining authority that there is a likelihood of getting bail, would be sufficient.

10. Furthermore, this Court also wants to refer to Section 5A of the Act which deals with the maintenance of public peace.

“5A Grounds of detention severable.- Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers (Amendment) Act, 1986)](Tamil Nadu Act 52 of 1986) under Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly:-



(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are:-

(i) vague;

(ii) non-existent;

(iii) not relevant

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.”

11. When several grounds are referred in the detention order to arrive at the subjective satisfaction, even if there is vagueness of non-existence or irrelevant reference about any one of the grounds, it will not vitiate the detention order.



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12. Here is the case where the detenu has already indulged in two murder cases and after getting bail in those two cases, had again indulged in a grave offence, which is punishable upto 10 years R.I. The subjective satisfaction of the detaining authority is based on the material placed before him. We also find no error in referring a case where an accused was granted bail for similar offence. When there is a reference about similar case, it is wrongly understood that the similar case must be identical. That is not the intention of the legislation or the Court which has interpreted the provision of the preventive detention order. Hence, this Habeas Corpus Petition is dismissed.

(G.J.,J.) (C.K.,J.)
26.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
skn
To

1.The Principal Secretary to Government,
Govt. of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai – 9.



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- 2.The Commissioner of Police,
Madurai City,
Madurai.
- 3.The Superintendent,
Central Prison,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
C.KUMARAPPAN,J.

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