



H.C.P.(MD) No.727 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2024

CORAM:

THE HONOURABLE **MR.JUSTICE C.V. KARTHIKEYAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

H.C.P.(MD) No.727 of 2024

M.Fathima

... Petitioner

-Vs-

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

2.The District Collector and District Magistrate Court
Tenkasi District,
Tenkasi

3. The Superintendent of Prison
Palayamkottai Central Prison
Tirunelveli District

... 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 impugned



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detention order passed by the second respondent made in his proceedings in M.H.S. Confdl. No. 21 of 2024 dated 01.04.2024 in detaining the detenue under Section 2(ggg) of the Tamil Nadu Act 14 of 1982 as a sexual offender and quash the same and direct the respondents to produce the detenue namely Beermohamed , Male aged about 52 years who is detained in Central Prison, Palayamkotti before this Court and set him at liberty.

For Petitioner	: Mr. A.Sheik Abdulla
For Respondents	: Mr.S.Ravi
	Additional Public Prosecutor

ORDER

The petition has been filed to call for the records relating to the detention order passed by the second respondent/District Collector and District Magistrate, Tenkasi District in his proceedings in M.H.S. Confdl. No. 21 of 2024 dated 01.04.2024 detaining the brother of the petitioner under Section 2(ggg) of the Tamil Nadu Act 14 of 1982 as a sexual offender and quash the same and the said detenue at liberty.



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2. It is stated that the defacto complainant is the wife of the detenue. She had married the detenue as her second husband. She had a daughter aged about 16 years who is studying XI standard. It is stated that on 05.03.2024, when her daughter was alone the detenue had committed an act of sexual assault and when the daughter resisted he had also threatened her. In this connection a complaint had been lodged at All Women Police Station, Tenkasi, for which First Information Report in Crime No. 6 of 2024 had been registered for the offences under Section 3,4,5(n) r/w.6 of POCSO Act and Section 506(i) of IPC. The detenue had been arrested on 11.03.2024. The detaining authority had thereafter passed the detention order on 01.04.2024.

3. The learned counsel appearing for the petitioner had raised the following grounds:

i) He had pointed out the date of arrest namely on 11.03.2024 and the date of passing the detention order namely 01.04.2024 and stated that there has been a delay of 20 days.

However a perusal of the records show that the detention order had been passed after applying for certified copies of the relevant documents by the



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sponsoring authorities from the concerned Court. The detention order had been passed immediately thereafter. The delay is not significant. We are not inclined to accept that particular reason.

ii) The learned counsel appearing for the petitioner then pointed out para no.5 of the detention order wherein the detaining authority has stated as follows:

“5.On perusal of the records , I am satisfied that Thiru Beermohamed is committing sexual crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a sexual offender as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982”

It is contended by the learned counsel that the detainee had been involved in only offence and still the detention order had been passed. It is further stated that the detainee had not been categorised as a habitual offender. However, a perusal of the record reveals that the allegation against the detainee was that he had committed the act of sexual assault on his own step daughter and therefore



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iii) The learned counsel for the petitioner then pointed out para no.6 of the detention order, which is as follows:

“6.I am aware that Thiru. Beermohamed is in remand in Tenkasi All Women Police Station Crime No. 6 of 2024 and in this case he has not filed any bail application so far. I am also aware that there is real possibility for his coming out on bail in future by filing bail application for the above case since in similar cases bails are granted by the appropriate Courts”.

It is contended by the learned counsel that the said opinion had been stated without any basis.

However, the detaining authority had considered the fact that the bail application had not been filed and had also stated that if bail application is being filed the discretion is always vested with the Court to grant bail or not to grant



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bail. Thereafter it had been stated that there is a possibility that bail could be granted in similar cases.

In this connection the learned counsel appearing for the petitioner pointed out grant of bail in a similar matter , wherein bail had been granted only under Section 167(2)(a)(i) of Cr.P.C. for yet another accused who had been similarly charged. Thus even if the court does not exercise discretion in granting bail, if investigation is not completed within stipulated period there is the possibility of the detenue being granted bail on furnishing sureties under the aforementioned provision. We are therefore not inclined to consider this particular ground alone.

iv) The learned counsel appearing for the petitioner then contended that in page no. 49 of the booklet relating to the Accident Register which runs to two pages in page Nos.49 and 51, the translated version had been given in page No. 53 and it is contented by learned counsel that the English version in page no.51 had not been translated.



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However the learned Additional Public Prosecutor contested this particular fact raised by the learned counsel and took the Court through the entire translated version in page no.53 of the booklet and pointed out that it also contains the portions of page nos 49 and 51 *albeit* in one page and not in two separate pages.

We had also read the translated version and we are satisfied that the translated version of the accident register has been given. We are therefore not inclined to consider this particular ground.

v) The learned counsel for the petitioner then pointed out page no.85 of the booklet which is a continuation of page no.83 which relates to the arrest memo. In page no. 85 it had been mentioned that the intimation of arrest had been given by SMS to a mobile number which had been given in page no.85. The learned counsel stated that there is no basis or supporting materials given for such SMS for actually being issued. However a careful perusal of the very same page no. 85 shows that the intimation has been given to the brother of the detenue Bakkeer Mydeen, who had also signed in the arrest memo. Intimation



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was given and the mobile number is an additional statement made. We are not therefore inclined to consider that particular ground.

vi) The learned counsel appearing for the petitioner then pointed out page nos.15 to 22 of the booklet which is the complaint lodged by the defacto complainant/wife of the detinue. The complaint starts at page no.15 and ends at page no.21. It is contended by the learned counsel for the petitioner that the pages are illegible.

We have carefully gone through each and every page viz., pages 15,17,19 and 21, in which seriatim the pages had been numbered. We find that the contents are legible and are decipherable and readable and is also in Tamil. We are thereafter not able to accept this particular ground raised by the learned counsel for the petitioner.

4. No other ground has been raised by the learned counsel appearing for the petitioner. We are not inclined to allow the petition



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5. In the result, the Habeus Corpus Petition stands dismissed.

[C.V.K., J.] & [R.P., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

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

2.The District Collector and District Magistrate Court
Tenkasi District,
Tenkasi

3. The Superintendent of Prison
Palayamkottai Central Prison
Tirunelveli District

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



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