



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.02.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

H.C.P.(MD) No.1265 of 2023

Latha ... Petitioner/mother of the detenu

-VS-

- 1.The State of Tamil Nadu,
represented by
The Additional Chief Secretary to Government,
Home Prohibition and Excise Department,
Fort St.George,
Chennai -600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Inspector of Police,
Prohibition Exercise Wing,
Kovilpatti,
Thoothukudi District.
- 4.The Superintendent of Prison,
Central Prison,
Palayamkottai.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India



WEB COPY

praying for the issue of a Writ of Habeas Corpus calling for the records relating to the detention order passed by the second respondent in Detention Order in H.S(M).Confdl.No.121 of 2023, dated 16.09.2023 and to quash the same and to direct the respondents to produce the detenu Vijayakumar, son of Sekar, Male, aged 36 years, who is detained at Central Prison, Palayamkottai before this Court and set him at liberty

For Petitioner : Mr.R.Mariappan

For Respondents : Mr.S.Ravi,
Addl.Public Prosecutor

ORDER

DR.G.JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

The mother of the detenu challenging the detention order passed under Act 14 of 1982, is before this Court in H.C.P(MD)No. 1265 of 2023.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.According to the respondents, Eicher Pro 1110 Container



WEB COPY

vehicle from Andhra Pradesh was intercepted on 22.08.2023, based on the specific information, near Rajaputhukudi at Madurai-Tirunelveli National Highways. On search, 600 Kgs of Ganja was recovered from the vehicle bearing Registration No.TN 04 AR2585. As a result of which, the occupants in the vehicle were arrested for possessing commercial quantity of Narcotic drugs. Therefore, they were remanded to judicial custody. Among the accused, the son of the Petitioner, Vijayakumar is one among them. Based on the recommendation of the Sponsoring Authority, the Detaining Authority has passed the Detention Order on 16.09.2023.

4.The said detention order is challenged on the ground that likelihood of granting bail, is remote for the commercial quantity of Ganja. However, dissimilar case was cited as similar case, which shows the non-application of mind in passing the detention order. It is also submitted that the Remand Extension Order was not furnished to the Petitioner, which prejudiced and has prevented the Petitioner from making proper and effective representation. However, from the perusal of book-let, it is seen that the Remand Extension Order was furnished to the detenu.



WEB COPY

5.A detailed counter affidavit has been filed by the second respondent, wherein, the reasoning for the subjective satisfaction of the Detaining Authority and regarding likelihood of getting bail in a similar case qua for commercial quantity has been stated.

6.The learned counsel for the Petitioner circulated an order of this Court made in H.C.P(MD)No.967 of 2023, wherein, the Coordinate Bench of this Court has considered the plea of live and proximity link between the grounds of detention and the purpose of detention and also the application of mind regarding the grant of bail. The learned counsel for the Petitioner bring parallel on facts that the case cited also involves solitary case, as in the case under consideration and prayed for interference of the detention order.

7.However, on close scrutiny of the above judgment, this Court finds that, on facts, the detention order is based on a solitary case and the reasons for detention are valid and sustainable. No doubt, the Co-ordinate Bench of this Court thought it fit that by filing of Final report by the respondents-Police, there may not be any apprehension of granting bail in an NDPS case involving commercial



quantity and if any bail petition is filed, the trial Court shall consider the same on its own merits and in accordance with law, particularly, under Section 37 of the NDPS Act. This Court is of the view that it is needless to make such an observation in a Habeas Corpus Petition and hence, this Court is not inclined to consider the said observation, which is an *obiter dictum*.

8. As far as the non-furnishing of the Remand Extension Order, this Court is of the view that considering the likelihood of granting bail, *per se*, subsume the fact that the Petitioner was under judicial custody and his remand has been extended from time to time. The non-furnishing of the Remand Extension Order has not in any way prejudice the rights of the Petitioner in the present case. Therefore, this Court is of the view that it is not a fit case to review the order of detention, exercising the power of judicial review.

9. For the reasons aforesaid, the Habeas Corpus Petition stands dismissed.

[G.J.,J.] [C.K.,J.]

28.02.2024



NCS : Yes/No
Index : Yes / No
Internet : Yes / No

vsn

To:

- 1.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St.George,
Chennai -600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Inspector of Police,
Prohibition Exercise Wing,
Kovilpatti,
Thoothukudi District.
- 4.The Superintendent of Prison,
Central Prison,
Palayamkottai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



DR.G.JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

vsn

ORDER MADE IN
H.C.P.(MD) No.1265 of 2023

28.02.2024