



H.C.P.(MD)No.1323 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
11.03.2024	19.03.2024

CORAM:

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

H.C.P.(MD)No.1323 of 2023

S.Manjula

... Petitioner

vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

... Respondents



H.C.P.(MD)No.1323 of 2023

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl.No.32 of 2023, dated 27.03.2023, on the file of the second respondent herein, quash the same and direct the respondents to produce the detenu or body of the detenu, namely, the petitioner's son *i.e.*, Sridev Vasanth, aged about 23 years, S/o.Subramanian, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.N.Pragalathan

For Respondents

: Mr.S.Ravi

Additional Public Prosecutor

ORDER

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

The petitioner herein is the mother of the detenu by name, Sridev Vasanth. The detention order passed on 27.03.2023 by the second respondent is sought to be quashed in this Habeas Corpus Petition.



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2. The averments made in the affidavit filed in support of the petition is that, Crime No.39 of 2023, dated 07.03.2023 on the file of the Radhapuram Police Station for alleged offences under Sections 294(b), 307 and 506(ii) I.P.C. is a false case. The adverse cases mentioned in the detention order are also false cases. The reason stated in the detention order that her son indulging in activities prejudicial to the maintenance of public order and public peace is baseless. The narration of incident in the ground case even if believed to be true, it is only a case of law and order, but not a case of disturbance to maintenance of public peace. The reason for subjective satisfaction and the likelihood of getting bail suffers non-application of mind. By citing a dissimilar case, the detaining authority has recorded that there is likelihood of getting bail in future and if the detenu is released on bail, he will indulge in activities prejudicial to public peace. To test the said observation copy of the similar case, bail petition not supplied to the detenu. The detention order ought to be forwarded to the Government forthwith. In this case, the detaining authority had not complied the said mandatory provision. The copy of the report and the date of despatch of the report to first respondent not furnished to the detenu. The mandate under Sections 10 and 11 of the Act violated in this case. The representation dated 27.10.2023, sent



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through registered post not considered. Further, few pages of the documents relied are in English and no translation version provided. In addition to that, few pages are not legible and readable. The content of the English version and the translated Tamil version are not same.

3. Rebutting each and every ground, the second respondent has filed counter affidavit. In the counter affidavit, it is stated that, Sridev Vasanth, the detenu had come to the adverse notice in Crime Nos. 37, 38 and 39 of 2023, dated 07.03.2023, on the file of Radhapuram Police Station. Earlier, on the complaint given by one Senthil Kumar, S/o.Essakki, a case under Section 307 I.P.C. was pending against the co-accused Kannan since 2021. The said Kannan was pressurising the family members of Esakki to advise Senthil Kumar to withdraw the complaint. When they refused to withdraw the complaint, in order to threaten them, Kannan along with the detenu and others set fire to the vehicles parked in front of the Essakki's house during the early hours of 07.03.2023. When Essakki noticed it and raised alarm, the detenu and his associates threatened him saying like the two wheelers, they will set him also under fire. They threw bottles at him and left the place. After some time, the same gang set fire to the two wheeler of



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one Arulkumar Two cases were registered, one in Crime No.37 of 2023 and another in Crime No.38 of 2023. Coming to know about the registration of cases against him and his associates, at about 07.00 a.m., on the same day (07.03.2023), Essakki was passing through Radhapuram Government Hospital Bus Stop, the detenu and his associate Kannan came in a motorcycle and restrained Essakki and stabbed him with knife for not withdrawing the complaint against him. When the public nearby came to rescue Essakki, the detenu and his associates wielded the knife and threatened the public. The public got panic and ran away. The shop keepers closed their shop shutter out of fear. Due to this, routine normal traffic got affected. Hence, case in Crime No.39 of 2023 registered under Sections 294(b), 307 and 506 (ii) I.P.C. Being satisfied the conduct of the detenu is prejudicial to the maintenance of public order, the detention order was passed against Sridev Vasanth, the son of this petitioner and against the co-accused Kannan following the procedure.

4. The learned Additional Public Prosecutor submitted that, the detaining authority had taken note of the antecedent of the detenu, the apprehension of the public, who witnessed the occurrence before arriving at the subjective



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satisfaction. Since recourse to normal criminal law would not have the desired effect of effective prevention of the detenu from indulging in such activities in future, the preventive detention was ordered. The similar case referred in the detention order to consider the likelihood of getting bail is based on the provision of law, which the accused in similar case face trial. One cannot expect similar case must be similar in all aspects. The case referred need not be identical case. The relevant papers were furnished in the booklet served to the detenu.

5. According to the learned Additional Public Prosecutor, the petitioner has placed incorrect facts in the grounds of the petition. The intimation about the arrest in the adverse cases was given to one Arunkumar, the friend of the accused as mentioned in Serial No.12 of the Arrest Memo. The intimation about the detention order dated 28.03.2023 at the Palyamkottai Prison and it was conveyed to the mother of the detenu on 29.03.2023, who is none other the petitioner herein. The booklet furnished to the detenu contains all the necessary particulars to make representation effectively. The mandate of Sections 10 and 11 scrupulously followed and there is no infraction of those provisions as contented by the petitioner. One of the co-accused, by name, Ganesh @ Ganesh Babu in the



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ground case was granted bail by the learned Judicial Magistrate, hence, the inference of likelihood of getting bail drawn by the detaining authority and if he comes out on bail, he will be indulging in activities prejudicial to the maintenance of public peace. The satisfaction is based on record and not contrary to facts.

6. The detention order was informed to the Government forthwith in strict compliance of the Act. The advisory Board met on 25.04.2023 and heard the case of the detenu as contemplated under Section 10 of the Act. The relevant documents were placed before the Board within three weeks from the date of detention (28.03.2023), enabling the Board to consider the representation of 25.04.2023. The advisory Board confirmed the detention and passed its order within the time prescribed and read over to the detenu in the Prison.

7. After hearing the respective arguments of the learned counsels and on perusal of the records, this Court finds that the detenu was served with the copy of the detention order while he was in Prison in connection with the ground case. The arrest in the adverse cases as well as the ground case duly informed to the friend Arunkumar and his mother respectively, under acknowledgment. The



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offences and the motive for the offences discloses it has all trappings of causing disturbance to public order. Threatening a witness for prosecution in a attempt to murder case, in public with dangerous weapon with dire consequence followed by threat to the public, who came to rescue the victim *prima facie* satisfies the test of threat to public peace.

8. The point, which prayed for consideration whether non-supply of similar case bail petition to the detenu any way prejudiced the detenu from making effective representation and whether the non-supply of the sponsoring authority affidavit will vitiate the detention order, were already considered by this Court in H.C.P.(MD)No.1317 of 2023 filed by Tamilselvi, the mother of the co-accused Kannan, when this point was canvassed, this Court rejected this ground assigning reasons. Those reasons equally apply to this detenu also. Hence, we are of the view that this point needs no further deliberation.

9. Whereas, with regard to violation of the mandate prescribed under Section 10 of the Act 14 of 1982, a ground which has been raised in this Habeas Corpus Petition, the counter affidavit filed by the second respondent claims that



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provisions Sections 10 and 11 of the Act were scrupulously complied. However, we find the date of forwarding the relevant document before the Advisory Board and the date of receiving the same not specifically mentioned. Since the Advisory Board has met on 25.04.2023 to decide the representation of the detenu and he had participated in the proceedings on that date, this Court is called to presume that the relevant documents in connection with the detention ought to have reached the Advisory Board before that date.

10. The detention order is dated 27.03.2023. The copy of the detention order served on the detenu in the Prison on 28.03.2023. Three weeks period prescribed under Section 10 of the Act, falls on 17.04.2023. The date of Advisory Board meeting is 25.04.2023. Therefore, unless the respondent able to place record to show specifically that the Advisory Board received all the relevant documents before 17.04.2023 to decide upon the confirmation of the detention order, the benefit has to be given to the detenu. Therefore, this Court holds that, for failure to show that the Advisory Board was provided with the documents within three weeks from the date of detention order, the detention order has to be quashed following the judgment rendered in **Konamandaiyan @ Gunasekaran**



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vs. The Additional Chief Secretary to the Government and others [H.C.P. (MD)No.1303 of 2022, dated 28th March, 2023].

11. As a result, this Habeas Corpus Petition is allowed. The order of detention passed by the second respondent in M.H.S.Confdl.No.32/2023, dated 27.03.2023, is set aside. The detenu viz., Sridev Vasanth, aged about 23 years, S/o.Subramanian, is directed to be released forthwith unless his detention is required in connection with any other case.

Index : Yes
NCC : Yes
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[G.J., J.] & [C.K., J.]
19.03.2024

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
C.KUMARAPPAN, J.

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PRE-DELIVERY ORDER MADE IN
H.C.P.(MD)No.1323 of 2023

19.03.2024

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