



H.C.P.(MD).No.1411 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.03.2023

CORAM

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

H.C.P.(MD).No.1411 of 2023

Natchiyar

.. Petitioner/Mother of Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
State of Tamil Nadu,
Secretariat,
Chennai – 600 009.

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

3.The Superintendent,
Central Prison,
Palayamkottai.

.. 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



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detention order passed by the second respondent in M.H.S.Confdl.No. 116/2023 dated 20.09.2023 and quash the same and consequently, direct the respondents to produce the body or person of Mr.Chinnadurai S/o Uikkattan, aged 21 years, confined in Central Prison, Palayamkottai before this Court.

For Petitioner : Mr.T.Augustine Ebenezer

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

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

The petitioner is detained under the Tamil Nadu Act 14 of 1982 by the impugned order, dated 20.09.2023 on the subjective satisfaction of the detaining authority that the presence of the accused is likely to cause disturbance to the public peace.

2. The mother of the detenu Chinnadurai is before this Court challenging the detention order passed by the second respondent on



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20.09.2023 against the said Chinnadurai. The detention order is faulted and attacked on multiple grounds, which are capsulated as under:

(i) the grounds of detention refers about the earlier incident alleged to have been occurred on 05.06.2023 at about 12.10 hours, which is the subject matter of Crime No.103 of 2023 on the complaint given by one Parvathinathan. The material documents related to the said crime number were not furnished to the detenu.

(ii) the arrest of the detenu in the ground case was not communicated to his relatives as mandated under Section 50A Cr.P.C and **D.K.Basu** case.

3.The subjective satisfaction arrived by the detaining authority is based on granting of bail to the detenu in a case registered against him five years ago in Crime No.420 of 2019 for the offence under Section 392 IPC. The said case is neither similar in respect of the offence nor can be a ground to satisfy that the likelihood of detenu getting bail in an offence under Section 302 IPC, which is the ground case. More so, when the detenu has not even filed an application for bail.



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4. The second respondent has filed a counter narrating the reasons for imposing the detention order and had justified the detention order stating that the arrest of the detenu in the ground case was duly communicated to the father of the suspected accused and acknowledgement was also obtained. A copy of the arrest intimation with acknowledgement signed by Uikkattan, father of the detenu is produced before this Court.

5. Regarding reference of Crime No.103 of 2023, which found place in the detention order, the learned Additional Public Prosecutor submitted that it is a case against one Essaki @ Idlymani registered on the complaint given by the said Parvathinathan, in which, the detenu is not a suspected accused. The subjective satisfaction of the detaining authority was arrived based on the ground case, in which, the detenu Chinnadurai in support of Esakki @ Idlymani had made an attempt to murder the said Parvathinathan, who is the defacto complainant in Crime No.103 of 2023. The attempt was on 21.08.2023 at 19.30 hours, in which, the said Parvathinathan was done to death by the detenu Chinnadurai and his associate Esakki @ Idlymani, who



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had a motive to kill Parvathinathan. Esakki @ Idlymani is arrayed as first accused in the ground case.

6. The Additional Public Prosecutor further submitted that the Crime No.103 of 2023 has been referred to in the detention order to show the motive for Esakki @ Idlymani to murder the said Parvathinathan and it has nothing to do with the detenu, who joined Esakki @ Idlymani to commit murder of Parvathinathan. Since the detaining authority has not relied upon Crime No.103 of 2023 as an adverse case as against the detenu, non-furnishing of material documents connected with Crime No.103 of 2023 is immaterial for the detenu to make an effective representation.

7. This Court totally agrees with the above submission made by the learned Additional Public Prosecutor. There cannot be any confusion in the mind of the Court at any point of time that irrelevant and insignificant documents whether referred to or relied in the detention order ought to be served to the detenu. The Court should always take note of the fact that whichever material which are relevant to arrive at the subjective satisfaction



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to invoke the detention order and the other materials, which are necessary to make an effective representation, alone need to be served on the detenu and in case of any omission to furnish those material documents only that will enure benefit to the detenu and not otherwise.

8. Regarding non-communication of the arrest to the relatives in the ground case, the learned counsel for the petitioner would submit that this has caused prejudice to the detenu from making an effective representation. Certain Judgments of this Court were also relied upon to substantiate the said submission. This Court is of the firm view that the ground case, which is relied on by the detained authority to arrive at the subjective satisfaction falls on a different footing. The procedural protection provided for the suspected accused during the time of arrest and judicial remand will not apply to the detenu, who is detained under preventive detention order. Non-intimation of the arrest in the ground case may enure some benefit to the suspected accused in the trial of the ground case to canvass the point that the arrest is illegal and contrary to the law. The said point cannot be telescoped in the case of a detention order, which contemplates a different



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set of procedure. If a person, in the view of the detaining authority, has the propensity of committing crime, which will disturb the maintenance of public peace, that is sufficient to pass a detention order. It is not the case of petitioner that the detention order which is impugned in this petition, was not served to him. His contention is that the arrest in the ground case was not intimated to his relatives. Factually, the said contention found to be not correct in view of the acknowledgement given by the father of the detenu and copy furnished to the Court for perusal.

9. The learned counsel for the petitioner would submit that the said copy does not form part of the booklet served on the detenu. As we have already observed that whether the intimation of arrest in the ground case properly conveyed to the relatives or not, it will have no bearing to test the veracity of the detention order, if the detenu has already been secured under due process of law and in judicial custody.

10. In this case, the detenu was arrested in the ground case on 30.08.2023 and the detention order, dated 20.09.2023 was served on him at



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prison in the presence of the Prison Authority. On receipt of the detention order, the counsel made a representation to the authorities and that has been duly considered. Before the Advisory Board the detenu appeared and participated, the Board has also confirmed the detention order. Therefore, while there is no irregularity or perversity in the subjective satisfaction of the detaining authority or no violation of mandatory provision in respect of time frame fixed under the statute to process the veracity of the detention order, this Court finds no merit in the habeas corpus petition and hence, this Habeas Corpus Petition is dismissed.

(G.J.,J.) (C.K.,J.)
15.03.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

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To

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