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HCP(MD)No.1530 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2024

CORAM :

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

HCP(MD)No.1530 of 2023

Ramasamy

... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

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

3. The Superintendent of Prison,
Madurai Central Prison,
New Jail Road,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records pertaining to the detention order No.68/BCDFGISSSV/2023 dated 27.07.2023 under sub section 1 of section 3 of the Tamil Nadu Act 14 of 1982 passed by 2nd respondent and set aside the same by setting the detenu by the name Sathishkumar @ Kuttees, S/o.Ramasamy aged about 24 years and set him at liberty now currently detained at Central Prison, Madurai.



For Petitioner : Mr.M.Naveeth Ahamed
For R1 to R3 : Mr.S.Ravi
Additional Public Prosecutor

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ORDER

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

The Habeas Corpus Petition filed by the father of the detenu who has been held under preventive detention by order dated 27.07.2023.

The detention order is challenged on the following four grounds:

(i) According to the petitioner, in the ground case, the son of the petitioner was arrested on 10.06.2023 whereas after a lapse of 46 days, detention order was passed.

(ii) Totally eight persons were shown as accused in the ground case whereas only against three persons detention order is passed. Pick and choose among the accused held for the same crime.

(iii) The detention order suffers non application of mind. While recording likelihood of getting bail, the detaining authority has referred the bail granted to 8th accused ignoring the fact that the same bail application in respect of 6th accused, he was denied bail.

(v) The entire evidence collected in the course of



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investigation of the ground case does not disclose any possibility of disturbance to the public order at the most it can be termed as law and order problem only.

2. A detailed counter been filed by the 2nd respondent, wherein, he has stated that there is a live and proximity between the date of arrest and the detention order. Since eight accused were involved in this case, necessary particulars about their antecedents sought to be collected and based on the particulars and the antecedents of these accused, detention order was passed only against three of them and rest of the accused were not fallen under the test of persons likely to cause threat to public order. Therefore, it is submitted by the learned Additional Public Prosecutor that there is no discrimination of pick and choose among the accused. Only based on the records and the likelihood of causing disturbance to the public peace, detention orders have been passed. Regarding the detention order as against two other accused, it is fairly conceded by the learned Additional Public Prosecutor that the Advisory Board had not confirmed those detention orders. Learned Additional Public Prosecutor also submitted that the adverse case against this petitioner also warrants preventive detention because his presence in the public is a threat to public peace and tranquillity.



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3. Perusal of record indicates that voluminous documents in connection with eight accused has caused delay in taking a decision whether this petitioner is to be detained under Tamil Nadu Act 14 of 1982 or not. Though there were 47 days delay in taking the decision, the reason provided by the detaining authority would clearly justify the delay and since there is no time limit prescribed for passing a detention order, it is always expected that there must be a commission of crime and the detention order. In this case, this Court is convinced that the proximity has not severed and it was live and therefore, regarding non application of mind, the likelihood of getting bail in the case of this nature cannot be ruled out and for the said purpose, the detaining authority has referred the bail granted to 8th accused. As far as 6th accused is concerned, bail was not granted considering the other aspects but records indicate that 6th accused was granted bail subsequently. Also, it cannot be branded as a pick and choose case because the sponsoring authority and detaining authority though fit that out of 8 accused only 3 need to be detained.

4. The other point for consideration is whether the order of the Advisory Board which has declined to confirm the detention order in respect of two other accused will have a bearing in considering this Habeas Corpus Petition. It is to be noted that Advisory Board while



confirming the detention of this detenu Sathishkumar @ Kuttees has thought fit that the detention order of two other accused has to be revoked holding that there is no cause for detaining them.

5. On perusing the order passed by the Advisory Board which is a non speaking order, we are not able to consider why the detention order was revoked by the Board. However, as far as the present case is concerned, on perusal of the records this Court finds that the detaining authority has passed the detention order after fully being satisfied based on the records that the son of the petitioner is liable to be detained under Tamil Nadu Act 14 of 1982 because his conduct has caused threat to the public peace and tranquillity.

6. Hence, this Habeas Corpus Petition is dismissed. No costs.

(G.J., J.) (C.K., J.)
21.02.2024

Index : Yes / No
Neutral Citation : Yes / No
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