



H.C.P.(MD) No.1568 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.02.2024

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

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A.Syed Ali Fathima

... Petitioner/mother of the detenu

-Vs-

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

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in No.30/BCDFGISSV/2023 dated 12.06.2023 on the file of the second respondent herein and quash the same and direct the respondents to



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produce the detenu or body of the detenu namely the petitioner's son i.e., Satham Hussain, aged about 29 years S/o.Abdul Razak Alias Abubakkar, 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 mother of the detenu Satham Hussain, is before this Court challenging the detention order passed by the second respondent vide order dated 12.06.2023. Two complaints by same person, first alleging offence under POCSO Act and another alleging threat to withdraw the complaint, registered against the detenu, has invited the preventive detention order.

2.The learned counsel appearing for the petitioner submitted that the trial in the ground case in respect of offence under Section 417, 506(i) IPC and Section 5(I) r/w 6 of the Protection of Children from Sexual Offences Act has commenced and victim girl has turned hostile. Further, the medical report also



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does not support the prosecution case. This case was registered based on the private complaint. The detaining authority without applying his mind has invoked the provisions of Act 14 of 1982. The learned counsel further submitted that the detaining authority to arrive at subjective satisfaction of likelihood of getting bail, has referred a case, which is not similar to the facts of the case on hand. A case where bail was granted under Section 167 (2) Cr.P.C., on default clause, has been taken as a similar case, whereas the ground case registered against the petitioner is of graver offence of threatening the witness, which is not similar to the case referred by the detaining authority.

3.This Court after perusing the detention order and bail order passed in the similar case, finds that the case is not similar for the detaining authority to arrive at subjective satisfaction regarding likelihood of getting bail by the petitioner. On this sole ground, this Court holds that the detaining authority has not applied his mind properly before arriving at subjective satisfaction and the order of detention is liable to be quashed.

4.In the result, the Habeas Corpus Petition is allowed and the order of detention in No.30/BCDFGISSSV/2023 dated 12.06.2023 passed by the second



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respondent is set aside. The detenu, viz., Satham Hussain, S/o.Abdul Razak alias Abubakkar, aged 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[G.J.J.] & [C.K.J.]
20.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
- 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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