



HCP(MD)No.1487 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2025

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CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

HABEAS CORPUS PETITION(MD)No.1487 of 2024

Malarselvi

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Chennai-9.

2. The District Collector cum District Magistrate,
Madurai District,
Madurai.

3. The Superintendent,
Madurai Central Prison,
Madurai.

4. The Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 2nd respondent in detention order Detention Order B.C.D.F.G.I.S.S.S.V.No.34/2024 dated 16.09.2024 and to quash the same and direct the respondents to produce the body or



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person of the detenu, Kaniraja, S/o. Rasu, aged about 52 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.P.Balan
For Respondents: Mr.S.Ravi
Additional Public Prosecutor

ORDER

[Order of the Court was made by **A.D.JAGADISH CHANDIRA, J.**]

The petitioner is the wife of the detenu viz., Kaniraja, S/o. Rasu, aged about 52 years. The detenu has been detained by the second respondent by his order in B.C.D.F.G.I.S.S.V.No.34/2024 dated 16.09.2024, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.



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3. The learned counsel for the petitioner submitted that though the detenu has got a right of making representation to the detaining authority himself, the detaining authority has failed to mention the same in the grounds of detention and he has only stated that the detenu has got a right of making a representation against the detention order to the State Government. It is, therefore, stated that the detenu is deprived of his valuable right to make an effective representation. In support of his contentions, he would rely on the judgment of this Court reported in **2000 (3) MWN (Cr.) 142, S.Thai vs. State represented by the Commissioner of Police, Tiruchirappalli City, Tiruchirappalli & others** which has been confirmed by the Apex Court and subsequently followed by this Court in **Raja vs. The Additional Chief Secretary to Government [HCP(MD)No.1372 of 2022, dated 22.06.2023]**.

4. On a perusal of the Booklet, this Court finds that the impugned detention order suffers from infirmity due to the failure in not mentioning the detenu's right of making a representation to the detaining authority himself. Therefore, we are of the view that the said defect would deprive the detenu of his valuable right to make an



effective representation. It is in the said circumstances, this Court finds that the impugned detention order passed by the Detaining Authority is vitiated.

5. In this context, it is useful to refer to the Judgment in *S.Thai's* case (supra), wherein this Court has held that non mentioning of the detenu's right to make a representation to the detaining authority is an infraction of Article 22(5) of the Constitution of India. The relevant portion of the said decision is extracted hereunder:

"In the light of the recent pronouncement of the Apex Court, as pointed out, the detention order is silent in that the Detaining Authority had not intimated the detenu of a right to make a representation to the detaining authority, namely the District Magistrate who had passed the order of detention whose detention order will be valid upto twelve days, by which date the State Government has to either approve it or otherwise pass consequential orders. This failure, it is contended is an infraction of Article 22 (5) of the Constitution. In the circumstances, the point that arises for consideration in this Habeas Corpus Petition is: While ordering detention under Section 3 (2) of the Tamil Nadu Act 14/82, the



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detenu not having been informed of a right of representation to the detaining authority, who had ordered detention, whether the omission to inform the detenu of a right of representation to the detaining authority, who has passed the order of detention, infracts the constitutional guarantee of Article 22 (5) of the Constitution? Whether the impugned order of detention is vitiated and whether the impugned order is liable to be set aside and the detenu to be set at liberty?''

6. We find that the above cited *S.Thai's* case (supra), applies in all force to the case on hand, as we find that failure to mention the detenu's right of making representation to the detaining authority himself in the grounds of detention, has impaired his constitutional right to make an effective representation against the impugned preventive detention order. To be noted, this constitutional right is ingrained in the form of a safeguard in Clause (5) of Article 22 of the Constitution of India. We, therefore, have no hesitation in quashing the impugned detention order.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in B.C.D.F.G.I.S.S.V.No.34/2024 dated



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16.09.2024, passed by the second respondent is set aside. The detenu viz.

Kaniraja, S/o. Rasu, aged about 52 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

[A.D.J.C., J.] [R.P., J.]
30.06.2025

Index : Yes / No
Neutral Citation : Yes / No
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AND
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ORDER MADE IN
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