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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

HABEAS CORPUS PETITION(MD)No.368 of 2026

Kumar @ Omelet Kumar ... Petitioner

vs.

1. The State of Tamilnadu
Represented by its
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

3. The Inspector of Police,
Palani Chettipatti police Station,
Theni District.

4. The Superintendent of Prison,
Central Prison,
Madurai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating

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to the detention order passed by the 2nd respondent in Detention Order No.12/2026 dated 31.01.2026 and to quash the same and direct the respondents to produce the body or person of the detenu, viz., Kumar @ Omelet Kumar aged 45 years, son of Murugan, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : M/s.K.Kavitha
For Respondents : Mr.G.Karuppasamy Pandiyan
Counsel for State of Tamilnadu (Crl.Side)

O R D E R

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

The petitioner is the detenu viz., Kumar @ Omelet Kumar, son of Murugan aged 45 years. The detenu has been detained by the second respondent by his order in Detention Order No.12/2026 dated 31.01.2026, 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. Learned counsel for the petitioner would submit that the detenu had not filed any application for bail. While so, the detaining authority relying on another case stating it to be a similar case, has inferred that

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there is a real possibility of the detenu coming out on bail. The subjective satisfaction recorded by the authority without disclosing the facts of the case and without supportive material, is a mere *ipse dixit*. Hence, he prays for setting aside the impugned detention order.

3. Heard the learned counsel appearing for the petitioner and the learned counsel for State of Tamilnadu (Crl.Side) appearing for the respondents and perused the materials available on record.

4. When no such bail application has been filed by the detenu, there is no likelihood of the detenu being released on bail. Therefore, the subjective satisfaction arrived at by the detaining authority is *ipse dixit*. Further, the similar case relied on also does not pertain to a co-accused and it pertains to a different crime number registered in the year 2024. In this regard, it is relevant to extract below the relevant passage of the judgment of the Hon'ble Supreme Court in **Alagu vs The State of Tamil Nadu** reported in **2026 SCC OnLine SC 976 : (2026) SCC 976**:

> ''***12.*** *There is no dispute that on the date when the detention order was passed, the detenue was in jail in connection with a murder*

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case registered as Case Crime No. 01/2025. Further, there is no dispute that on the date the detention order was passed, the bail prayer of the detenue stood rejected vide order dated 07.02.2025 and no other application for bail was pending.

13. *Besides that, it is not the case of the detaining authority that any co-accused of the detenue, similarly situated, was granted bail in the crime in connection with which the detenue was in jail.*

14. *Having noticed the admitted position, we may now consider the observations of this Court in some of the decisions cited before us.*

15. *In Rekha (supra), this Court, in paragraphs 7 and 27, observed:*

''7. A perusal of the above statement in para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein nor the application number nor whether the bail orders were passed in respect to the co-accused on the same case, nor whether the bail orders were passed in respect of other co accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that in similar cases bails were granted by the courts. In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

27. In our opinion, there is a real possibility of release of a

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person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.''

16. *In Huidrom Konungjao Singh (supra), this Court was pleased to observe that grant of bail to some other person in some other case cannot be a ground to believe that the detenue, who is involved in some other case, is likely to be released on bail. Relevant paragraphs of this decision are extracted below:*

''12. In Rekha v. State of T.N., this Court while dealing with the issue held:

"7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of co- accused on the same case, nor

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whether the bail orders were passed in respect of other co- accused in cases on the same footing as the case of the accused….

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then of course, it could be argued that there is likelihood of the accused being released on bail, because it is normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail… A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody "provided he has moved a bail application which is pending." It follows logically that if there is no bail application pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenue being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground." Thus, it is evident from the

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aforesaid judgment that it is not the similar case i.e., involving similar offense. It should be that the co-accused in the same offense is enlarged on bail and on the basis of which the detainee could be enlarged on bail.

"15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case had not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of the Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eye of the law."

17. *In Rajesh Gulati (supra), this Court held that if the subjective satisfaction of the detaining authority that detenue, already in jail, is likely to be released on bail is vitiated for lack of cogent material to draw such satisfaction, subsequent grant of bail is not a ground to sustain the detention order which stood vitiated for lack of material on the date when the order of detention was passed.*

18. *In Union of India v. Paul Manickam and another it was held that even if a person is in custody, a detention order can be validly passed (i) if the detaining authority is aware of the fact that the detenue is in actual custody; (2) if the detaining authority has*

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reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing.

19. *In the present case, we find from the Grounds of detention that the bail prayer of the detenue had already been rejected by the Court of Session and there was no fresh bail application filed by the detenue. Further, there is nothing on record to indicate that co-accused of the case in which the appellant was under judicial custody was admitted to bail on the date the detention order was passed. Detaining authority though, in the Grounds of detention referred to some other person being admitted to bail in some other case, did not disclose the facts of that case to demonstrate that it was so similar that a reasonable satisfaction could be drawn that detenue is likely to benefit from it and be released on bail. In such circumstances, having regard to the decisions of this Court considered above, in our view, there was no cogent material on record basis which the detaining authority could have drawn its satisfaction that the detenue was likely to be released on bail.*

20. In such circumstances, the satisfaction of the detaining authority stood vitiated for lack of cogent material to infer that there was likelihood of the detenue being released on bail.''

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5. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.12/2026 dated 31.01.2026 passed by the second respondent is set aside. The detenu namely, Kumar @ Omelet Kumar, son of Murugan aged 45 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

[A.D.J.C., J.] [T.V.T.S., J.]
03.07.2026

Index : Yes / No
Neutral Citation : Yes / No
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To:
1. The Additional Chief Secretary to Government,
State of Tamilnadu, Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

3. The Inspector of Police,
Palani Chettipatti police Station,
Theni District.

4. The Superintendent of Prison,
Central Prison, Madurai.

4. The Counsel for State of Tamilnadu (Crl.Side),
Madurai Bench of Madras High Court, Madurai.

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AND
T.V.THAMILSELVI, J.

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ORDER MADE IN
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