



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.09.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

H.C.P. (MD)No.194 of 2019

Kalyani : Petitioner

Vs.

- 1.The Additional Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai-600 009.
 - 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai.
 - 3.The Superintendent of Prison
Madurai Central Prison,
Madurai District.
- : Respondents

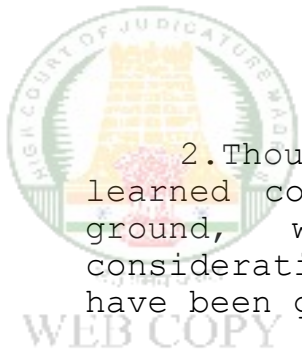
PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the respondent No.2 in Detention Order No.B.C.D.F.G.I.S.S.S.V.No.9/2019 dated 14.02.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Kalyani, son of Kannadichamy, aged about 31 years, now detained at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

Challenge is made to the order of detention passed by the second respondent vide proceedings in Detention Order No.B.C.D.F.G.I.S.S.S.V.No.9/2019 dated 14.02.2019, whereby the detenu was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding him as a "Drug Offender".



2. Though many grounds have been raised in the petition, the learned counsel for the petitioner focussed his argument on the ground, wherein, the detaining authority has taken into consideration the fact that the accused, who are similarly placed, have been granted bail by the High Court.

3. The learned counsel for the petitioner submitted that the detaining authority, without the availability of materials, cannot *ipso facto* satisfy himself regarding the imminent possibility of the detenu coming out on bail, merely on the ground that the accused, who are similarly placed have been granted bail.

4. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in ***Rekha v. State of Tamil Nadu (2011) 5 SCC 244*** to substantiate his submission.

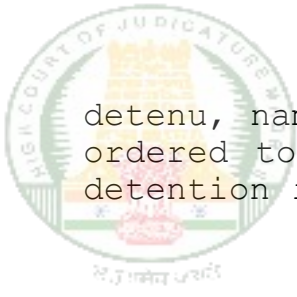
5. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

6. Even though several grounds have been raised in the petition filed before this Court, it will be enough, if this Court focuses on the main ground that has been raised by the learned counsel for the petitioner. The detaining authority, at Paragraph No.4 of the detention order, mentioned that the petitioner has not filed any bail application. However, it has been stated that in cases of similar nature, the accused persons have been granted bail by the High Court and therefore, there is imminent possibility of the detenu filing a similar bail petition and coming out on bail, after a lapse of time.

7. The issue that has been raised by the learned counsel for the petitioner is no longer *res integra* and it is covered by the judgment that has been cited by the learned counsel for the petitioner, which has been referred supra.

8. The Hon'ble Supreme Court has categorically held in the above judgment that the accused persons, who are similarly placed being granted bail by the same Court or by a higher Court, cannot be a ground for the detaining authority to come to such a subjective satisfaction without there being any materials to substantiate the same. This by itself reflects non application of mind on the part of the detaining authority. Therefore, the order of detention is liable to be interfered with.

9. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order in No.B.C.D.F.G.I.S.S.V.No.9/2019 dated 14.02.2019 is quashed. The



detenu, namely Kalyani, son of Kannadichamy, aged about 31 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(Crl. Side)

WEB COPY

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Additional Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Madurai.
- 3.The Superintendent of Prison
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-600 009
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD)No.194 of 2019
Dated: 03.09.2019

rr

JM/20.09.2019/3P/6C