



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.09.2019
CORAM:

WEB COPY

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

H.C.P. (MD) No. 199 of 2019

Prajesh Kumar : Petitioner

Vs.

1. The State of Tamil Nadu, rep by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai-9.

2. The Commissioner of Police,
O/o. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3. The Superintendent,
Central Prison,
Tiruchirappalli.

: 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 in detention order passed in C.No.07/Detention/C.P.O/T.C/2019 dated 08.02.2019 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner Prajesh Kumar, son of Rajan, male aged 22 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner
For Respondents

: Mr.K.A.S.Prabhu
: Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

S. VAIDHYANATHAN, J.
AND
N. ANAND VENKATESH, J.

Challenge is made to the order of detention passed by the second respondent vide proceedings in Detention Order in C.No.07/Detention/C.P.O/T.C/2019 dated 08.02.2019, whereby the petitioner was directed to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding him as a "Goonda".



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 District Court.

WEB COPY

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.

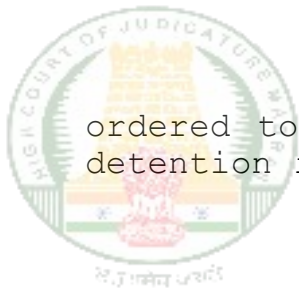
5. We have carefully considered the submissions made on either side and the materials available on record.

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, failed to take a note as to whether the Petitioner/detenu has filed any bail application. However, it has been stated that in cases of similar nature, the accused persons have been granted bail by the District Court and therefore, there is imminent possibility of the detenu filing a similar bail petition in future 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 <https://hcservices.ecourts.gov.in/hcservices> in Detention Order in C.No.07/Detention/C.P.O/T.C/2019 dated 08.02.2019 is quashed. The detenu, namely Prajesh Kumar, S/o.Rajan, male aged 22 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(CS)

To

- 1.The Principal Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort.St. George, Chennai-9.
- 2.The Commissioner of Police,
O/o. The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public(Law&Order) Department,
Secretariat,
Chennai 9

Order made in
H.C.P. (MD) No.199 of 2019
Dated: 04.09.2019

vsn

MK (18.09.2019) 3P 6C