



2. Challenging the order of detention, the mother of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.R.Alagumani, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents and carefully perused the records.

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there was non-application of mind on the part of the detaining authority. According to the learned counsel, in Paragraph No.6 of the impugned detention order, the detaining authority has stated that bail was granted to the detenu by the learned Sessions Judge, Tirunelveli, in Cr.M.P.No.1193 of 2017, on 28.03.2017, in Veeravanallur Police Station Crime No.46 of 2017 and bail was granted to him by the learned Judicial Magistrate, Cheranmahadevi, in Cr.M.P.No.4928 of 2018, on 05.10.2018, in Veeravanallur Police Station Crime No.303 of 2018. Further, the detenu Muthuraman, who is in remand in Kadayam Police Station Crime No.252 of 2018, has not filed any bail application sofar. However, the detaining authority has stated that there is a real possibility of the detenu coming out on bail by filing bail application for the above case before the appropriate court, since bail was granted to the similarly placed persons. Thus, according to the learned counsel, there is non-application of mind on the part of the detaining authority.

5. As rightly contended by the learned counsel for the petitioner, the detenu has not filed any bail application for the abovesaid case, however, the detaining authority, in the impugned detention order, has held that there is a real possibility of the detenu coming out on bail by filing bail application for the above said case before the appropriate court, inasmuch as the similarly placed person was granted bail. Even in the vernacular order, the same averment has been made. That apart, the detaining authority has not given any material to show that there is every likelihood of the detenu being released on bail in the cases cited supra.

6. At this juncture, it would be relevant to refer to the decision of the Supreme Court in **Rekha vs. State of Tamil Nadu**, [2011 (5) SCC 244], wherein, in Paragraph No.27, it has been held as follows:

"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 no bail application is pending, then there is no likelihood of the person in custody being released 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 detennu 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 bail statement of the authority cannot be believed."

Thus, on the above sole ground alone, the impugned detention order is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl No.148/2018, dated 12.12.2018, passed by the second respondent, is set aside. The detenu, namely, Muthuraman, son of Archunan, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS)

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To:

- 1.The Principal Secretary to Government 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,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort.St.George, Chennai -9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.1831 of 2018

26.04.2019