



HCP(MD)No.412 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.09.2022

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THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.412 of 2022

E.Ayyadurai

.. Petitioner /father of
the detenu

Vs.

1.State of Tamil Nadu
rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Tirunelveli City, Tirunelveli.

3.The Superintendent of Prison,
Central Prison, Palayamkottai
Tiruchirappalli.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the detention order passed in No.8/BCDFGISSSV/2022 dated 16.02.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son ie., Marimuthu, aged about 25 years, S/o.Ayyadurai now



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detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Marimuthu aged about 25 years, S/o.Ayyadurai. The detenu has been detained by the second respondent by his order in No.8/BCDFGISSSV/2022 dated 16.02.2022 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.

3. Though several grounds have been raised in the Habeas Corpus



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Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the following grounds:

(i) there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay, and

(ii) the detaining authority has taken into consideration the order passed in the bail petition in CrI.M.P.No.563/2020 dated 16.10.2020 and come to the conclusion that in a similar case bail has been granted and there is likelihood of the detenu released on bail. The learned counsel submitted that the detaining authority was aware of the fact that the detenu did not file any bail application in the two earlier cases, which involved in commercial quantity. Therefore, under such circumstances, the bail order, which was passed in a case involved in between quantity cannot be considered to be a similar one.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that though there was delay in considering the representation, on that score alone, the



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impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 16.02.2022. The petitioner made a representation dated 14.03.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 17.03.2022. The remarks were duly received on 24.03.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 31.03.2022.

6. It is the contention of the petitioner that there was a delay of 7 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 5 days in submitting the remarks and further there was a delay of three days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary.

7. On carefully going through the detention order, it is seen that the detaining authority had taken note of the fact that the detenu has not filed any bail petition in Crime Nos.122 and 168/2021, which involved



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commercial quantity. The bail petition filed only in the ground case in Crime No.14/2022 was involving inbetween quantity. Hence, the bail order that was taken into consideration by the detaining authority, which involves inbetween quantity cannot be considered to be a similar one, since the adverse cases pertain to commercial quantity. It, therefore, reflects non application of mind on the part of the detaining authority.

8. In view of the above, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.8/BCDFGISSSV/2022 dated 16.02.2022 passed by the second respondent is set aside. The detenu, viz., Marimuthu S/o.Ayyadurai, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
23.09.2022

Index : Yes/No

Internet : Yes

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police,
Tirunelveli City, Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai
Tiruchirappalli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.**

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