



HCP(MD)No.495 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.10.2022

CORAM

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

H.C.P.(MD)No.495 of 2022

Periyakaruppan

...Petitioner/
father of the detenu

Vs.

1. State of Tamil Nadu,
The Additional Chief Secretary to Government,
Home (Prohibition and Excise Department),
St.George Fort,
Chennai-600009

2. The District Collector and District Magistrate,
Sivagangai District,
at Sivagangai.

3. The Superintendent of Police,
Central Prison,
Madurai.

4. The Inspector of Police,
Thiruppathur All Women Police Station,
Sivagangai District.
(In Crime.No.15 of 2021).

...Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order passed by the 2nd Respondent vide Cr.M.P.No.07/S.O/2022 dated 10.01.2022 and set aside the same and consequently direct the Respondents to produce the body or person of detenue namely Ganapathy, S/o.Periyakaruppan, aged about 28 years, before this Court and set him at liberty, now he is detained at Central Prison, Madurai.

For Petitioner : Ms.A.Devaki
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz., Ganapathy, S/o.Periyakaruppan, aged about 28 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.07/S.O/2022 dated 10.01.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under



challenge in this Habeas Corpus Petition.

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2. Though several grounds have been raised in the Habeas Corpus 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 competent 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.



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5. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority was aware of the fact that the bail applications that were filed by the detenue were dismissed and no bail application was pending as on the date, when detention order was passed. However, the detaining authority took into consideration the bail that was granted to one Akbar Ali Ambalam in Cr.M.P.No.823/2021 dated 09.09.2021 by this Court. According to the learned counsel appearing for the petitioner, the similar case that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu being released on bail, is not a similar case. Hence, the detention order suffers from non application of mind.

6. We have carefully considered the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

7. We have carefully gone through the bail order relied upon by the detaining authority passed in Cr.M.P.No.823 of 2021 dated 09.09.2021. That was the case, where the Court took into consideration the fact that the



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164 Cr.P.C., statement of the victim girl was already recorded and the prosecution itself did not have any objection in granting bail to the accused person therein. The facts of that case cannot be treated to be a similar case since in the present case, the prosecution has vehemently opposed the bail petition filed by the detenu and both the bail petitions filed by the detenu were dismissed and there was no bail petition pending as on the date of passing of the detention order. In view of the same, we find that the subjective satisfaction arrived at by the detaining authority with regard to the likelihood of the detenu coming out on bail suffers from non-application of mind on the part of the detaining authority.

8.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*.

9.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



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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.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.07/S.O/2022 dated 10.01.2022 passed by the second respondent is set aside. The detenu, viz. Ganapathy, S/o.Periyakaruppan, aged about 28 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.]
14.10.2022

Index : Yes/No
Internet : Yes
PJJ

To
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Home (Prohibition and Excise Department),
St.George Fort,
Chennai-600009.



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5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
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