



WEB COPY



HCP(MD)No.593 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU

AND

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.593 of 2022

Balusamy

.. Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.

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

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records pertaining to the



HCP(MD)No.593 of 2022

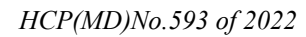
impugned detention order passed by the second respondent made in his proceedings in P.D.No.25/2022 dated 20.03.2022 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely, Guru @ Gurumoorthi, aged about 22 years, S/o.Rajendran, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.A.Joseph Jerry
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the uncle of the detenu viz., Guru @ Gurumoorthi, aged about 22 years, S/o.Rajendran. The detenu has been detained by the second respondent by his order in P.D.No.25/2022 dated 20.03.2022 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



(ii) the detaining authority was aware of the fact that there was no bail petition pending and has stated as if steps are being taken to file a bail petition. That apart, the detaining authority had relied upon the order passed by this Court in CrI.O.P.(MD).No.20102 of 2013 and has come to a conclusion that bail has been granted in a similar case. The learned counsel submitted that the facts of the case in the bail order relied upon by the detaining authority is not similar to the present case.



HCP(MD)No.593 of 2022

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 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 learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and final report was filed and it was taken on file by the Additional District Court, Kumbamonam, in S.C.No.216 of 2022.

6. The Detention Order in question was passed on 20.03.2022. The petitioner made a representation dated 04.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 12.04.2022. The remarks were duly received on 25.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 28.04.2022.



HCP(MD)No.593 of 2022

7. It is the contention of the petitioner that there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which 6 days were Government holidays and hence there was an inordinate delay of 6 days in submitting the remarks and further there was a delay of two days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary.

8. On carefully going through the detention order, insofar as the likelihood of the detenu coming out on bail, the detaining authority has clearly stated that there is no bail petition pending as on the date when the detention order was passed. There is only a vague statement as if steps are being taken by his son-in-law to file a bail petition. That apart, the similar order that was relied upon by the detaining authority is not pertaining to a similar case and it was a bail granted by this Court, considering the bail that was already granted to the co-accused. It, therefore, reflects non application of mind on the part of the detaining authority.

9. In view of the above, the detention order suffers from non-application of mind on the part of the detaining authority and the same is



HCP(MD)No.593 of 2022

liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.25/2022 dated 20.03.2022 passed by the second respondent is set aside. The detenu, viz., Guru @ Gurumoorthi, aged about 22 years, S/o.Rajendran, 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.)
30.09.2022

Index : Yes/No
Internet : Yes
RM



HCP(MD)No.593 of 2022

To

WEB COPY

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.593 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

RM

H.C.P.(MD)No.593 of 2022

30.09.2022