



HCP(MD)No.590 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

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.590 of 2022

Pandiselvi

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.

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

4.The Inspector of Police,
Subramaniyapuram Police Station,
Madurai District.

.. Respondents



HCP(MD)No.590 of 2022

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the detention order passed by the second respondent in Detention Order No. 11/BCDFGISSSV/2022 dated 31.03.2022 and to quash the same and direct the respondents to produce the body or person of the detenu Vignesh @ Nari Vignesh, aged about 27 years, S/o.Velu, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.M.Karunanithi

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Vignesh @ Nari Vignesh, aged about 27 years, S/o.Velu. The detenu has been detained by the second respondent by his order in Detention Order No. 11/BCDFGISSSV/2022 dated 31.03.2022 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.



HCP(MD)No.590 of 2022

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 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 relied upon and taken into consideration the order passed in Cr.M.P.No.775 of 2022 dated 21.03.2022 and had come to the conclusion that the bail order has been granted in the similar case. However, the learned counsel submitted that the ground case is for the offence under Section 392 IPC, whereas, the bail order in similar case pertains to the offence under Section 506(ii) IPC.



HCP(MD)No.590 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 Detention Order in question was passed on 31.03.2022. The petitioner made a representation dated -Nil-. Thereafter, remarks were called for by the Government from the Detaining Authority on 19.04.2022. 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 29.04.2022.

6. It is the contention of the petitioner that there was a delay of 5 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 3 days in submitting the remarks and further there was a delay of two days



HCP(MD)No.590 of 2022

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, insofar as the second ground that was urged by the learned counsel for the petitioner, it is seen that the facts and circumstances, the bail order that was relied upon by the detaining authority is not a similar to the case on hand. Since it involves a major offence under section 506 (ii) IPC, whereas, ground case is for the offence under Section 392 IPC. Therefore, by no stretch, it can be called as a similar case. It, therefore, reflects non-application of mind on the part of the detaining authority to come to the subjective satisfaction.

8. 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 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 D.O.No.11/BCDFGISSSV/2022 dated 31.03.2022



HCP(MD)No.590 of 2022

passed by the second respondent is set aside. The detenu, viz., Vignesh @
Nari Vignesh, aged about 27 years, S/o.Velu, 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.590 of 2022

To

WEB COPY

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City,
Madurai.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Inspector of Police,
Subramaniyapuram Police Station,
Madurai District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.590 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

RM

H.C.P.(MD)No.590 of 2022

30.09.2022