



HCP(MD)No.617 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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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.617 of 2022

Mani

.. Petitioner

Vs.

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

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

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

.. Respondents



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PRAYER : 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 H.S.(M)Confdl.No.46/2022 dated 17.03.2022 on the file of the second respondent herein and to quash the same and direct the respondents to produce the detenu or body of the detenu namely, Mani, aged about 56 years, S/o.Mariya Micheal Nadar, now 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 detenu viz., Mani, aged about 56 years, S/o.Mariya Micheal Nadar. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl.No.46/2022 dated 17.03.2022 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. 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 bail order that was relied upon by the detaining authority in Cr.M.P.No.306 of 2019, dated 24.01.2019 cannot be considered to be a similar case.

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



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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 further submitted that the investigation was completed and final report was filed and it was taken on file by the Special Court for POCSO Act cases, Thoothukudi in Spl.S.C.No.50 of 2022, and the case stands posted for examination of witnesses, on 20.10.2022.

6. The Detention Order in question was passed on 17.03.2022. The petitioner made a representation dated 05.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 18.04.2022. The remarks were duly received on 28.04.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 04.05.2022.



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7. It is the contention of the petitioner that there was a delay of 9 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 7 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 second ground that was urged by the learned counsel for the petitioner, the bail order that was relied upon by the detaining authority pertains to a case where the accused was aged about 21 years and the victim girl was aged about 17 years. In the present case, the detenu is aged about 54 years and the victim girl is aged about 8 years. Hence, the facts pertaining to the bail order cannot be considered to be a similar case. It, therefore, reflects non-application of mind on the part of the detaining authority to come to the subjective satisfaction.

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



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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 H.S.(M)Confdl.No.46/2022 dated 17.03.2022 passed by the second respondent is set aside. The detenu, viz., Mani, aged about 56 years, S/o.Mariya Micheal Nadar, 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
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