



HCP(MD)No.620 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.620 of 2022

Samuthiravel

.. Petitioner

Vs.

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

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

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 records from the second respondent in M.H.S.Confdl.No.24/2022 dated 25.03.2022 by setting aside the said order of detention passed by the second respondent and setting the detenu Murugan, aged about 53 years, S/o.Ramaraj, at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the brother of the detenu viz., Murugan, aged about 53 years, S/o.Ramaraj. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.24/2022 dated 25.03.2022 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 detaining authority has relied upon and taken into consideration the order passed in Cr.M.P.No.3178 of 2019, dated 22.04.2019 and has come to a conclusion that the bail has been granted in a similar case and therefore, there is a likelihood of the detenu being released on bail. According to the learned counsel for the petitioner, the bail order did not pertain to the similar case.



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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 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, Tirunelveli in Spl.S.C.No.98 of 2022, and the case stands posted for hearing on 31.10.2022

6. The Detention Order in question was passed on 25.03.2022. The petitioner made a representation dated 16.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 20.04.2022. The remarks were duly received on 04.05.2022. Thereafter, the



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Government considered the matter and passed the order rejecting the petitioner's representation on 09.05.2022.

7. It is the contention of the petitioner that there was a delay of 13 days in submitting the remarks by the Detaining Authority, of which 5 days were Government holidays and hence there was an inordinate delay of 8 days in submitting the remarks and further there was no delay 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 bail order, insofar as the second ground that was urged by the learned counsel for the petitioner, it is seen that that was a case where the accused therein is said to have picked the hands of the victim girl and grabbed her near his chest. In that case, it involved dispute between two families and that was taken into consideration by the concerned Court and the Court also took into consideration the fact that the accused had suffered 28 days incarceration. In the present case, the detenu is a Teacher and the victim girl is a student and by no stretch, the facts of the present case can be considered to be similar to the facts of the



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case pertaining to the bail order that was relied upon by the detaining authority. It, therefore, reflects the 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 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 M.H.S.Confdl.No.24/2022 dated 25.03.2022 passed by the second respondent is set aside. The detenu, viz., Murugan, aged about 53 years, S/o.Ramaraj, 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



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