



HCP(MD)No.904 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.904 of 2022

Tamilarasan

.. Petitioner /father of
the detenu

Vs.

1.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,
Thoothukudi District.

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.49/2022 dated 23.03.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son ie., Jeyandran, aged about 23 years, S/o.Tamilarasan now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Muthumalai Raja

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the father of the detenu viz., Jeyandran, aged about 23 years, S/o.Tamilarasan. The detenu has been detained by the second respondent by his order in H.S.(M).Confdl.No.49/2022 dated 23.03.2022 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.



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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) there was no bail petition filed by the detenu and a vague statement has been made in the detention order as if the detenu, has trying to file a bail petition in the ground case. The learned counsel submitted that this can never be a ground to come to a conclusion that there is a likelihood of the detenu coming out on bail.



4. In support of his contention, the learned counsel for the Petitioner relied upon the case of ***Rekha .vs. State of Tamil Nadu, through Secretary to Government and another reported in (2011) 5 SCC 244***, wherein, it has been held as follows:

12. In Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr., (2011) 5 SCC 244, this Court while dealing with the issue held :

“7.A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused.....

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the



orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner; then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused



whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground.” (Emphasis added)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

13. So far as the appellant’s son is concerned, he had been arrested for the offence related to FIR No.53 (6) 2011 under [Section 302 IPC](#) read with [Section 25\(1-A\) Arms Act](#) dated 14.6.2011. The FIR had been lodged against unknown persons, however, appellant’s son was arrested on 19.6.2011 in respect of the said offence. Subsequently, the detention order dated 30.6.2011 was passed by the District Magistrate under N.S. Act on various grounds, inter-alia, that the appellant’s son was involved in extorting of money and giving shelter to underground members of unlawful



association, namely, Kangleipak Communist Party vide notification published in the Gazette of India on 13.11.2009 as his activities were pre-judicial to the security of the State and maintenance of public order.

14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under [Section 17/20](#) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 under Section 20 of the UA (P) Act and released orders in those cases dated 13.12.2010 and 1.6.2011 respectively had been passed.

15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit



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statement in the grounds of detention and cannot be sustained in the eyes of law.

5. 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.

6. 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 II Additional District Court, Thoothukudi, in S.C.No.125 of 2022.

7. The Detention Order in question was passed on 23.03.2022. The petitioner made a representation dated 17.04.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on



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25.04.2022. The remarks were duly received on 02.05.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 06.05.2022.

8. It is the contention of the petitioner that there was a delay of 6 days in submitting the remarks by the Detaining Authority, of which 2 days were Government holidays and hence there was an inordinate delay of 4 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.

9. On carefully going through the detention order, it is seen that absolutely there is no material to show that the detenu had even filed the bail petition and there is a vague reference that the accused/detenu trying to file a bail petition without any supporting material. It, therefore, reflects non application of mind on the part of the detaining authority.

10. In view of the above, the detention order suffers from non-application of mind and the same is liable to be interfered with by this



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Court. The impugned detention order is, therefore, liable to be quashed.

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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M).Confdl.No.49/2022 dated 23.03.2022 passed by the second respondent is set aside. The detenu, viz., Jeyandran, aged about 23 years, S/o.Tamilarasan, 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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To

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1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Thoothukudi,
Thoothukudi District.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai
Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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