



H.C.P.(MD)No.726 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 18.11.2022

CORAM

**THE HON'BLE MR.JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

H.C.P.(MD)No.726 of 2022

Marimuthu

.. Petitioner / father of the detenu

Vs

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai-600 009.
2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Perambalur District.
3. The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order passed by the second Respondent in Cr.M.P.No.13/2022 dated 26.04.2022 and to quash the same and direct the Respondents to



H.C.P(MD)No.726 of 2022

produce the body or person of the detenu by name, Selvakumar, son of Marimuthu, aged 25 years, confining as “Sexual Offender” at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

N. ANAND VENKATESH, J.

The petitioner is the father of the detenu viz., Selvakumar, son of Marimuthu, aged 25 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.13/2022 dated 26.04.2022 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.

2. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner focussed his argument on the ground, wherein, the detaining authority has taken into consideration the fact that the accused, who are similarly placed, have been granted bail by



H.C.P(MD)No.726 of 2022

the competent Court.

WEB COPY

3. The learned counsel for the petitioner submitted that the detaining authority, without the availability of materials, cannot ipso facto satisfy himself regarding the imminent possibility of the detenu coming out on bail, merely on the ground that the accused, who are similarly placed have been granted bail.

4. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in **Rekha v. State of Tamil Nadu [(2011) 5 SCC 244]** to substantiate his submission.

5. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 24.03.2022 and the investigation was completed and final report was filed on 18.05.2022 before the Mahila Court, Perambalur. The same has been taken on file in Spl.S.C.No.12/2022. It was further submitted that the case is now at the stage of framing of charges.



6. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority was aware of the fact that no bail petition was filed by the detenu, relied upon the E-bail order passed in Cr.M.P.No.119/2020 dated 05.06.2020 and came to a conclusion that there is a likelihood of the detenu coming out on bail. According to the learned counsel appearing for the petitioner, the similar case that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu being released on bail, is not a similar case. Hence, the detention order suffers from non application of mind.

7. We have carefully considered the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

8. We have carefully gone through the detention order as well as the E-bail order passed in Cr.M.P.No.119/2020 dated 05.06.2020. It is seen from the said order that the bail was granted on the ground that the investigation was almost completed and the medical examination of the accused was also completed and the accused therein had already suffered incarceration for



nearly 32 days. In view of the same, the bail order that was relied upon by the detaining authority cannot be considered to be a similar case and hence we find that the subjective satisfaction arrived at by the detaining authority with regard to the likelihood of the detenu coming out on bail suffers from non-application of mind on the part of the detaining authority.

9. The issue that has been raised by the learned counsel for the petitioner is no longer *res integra* and it is covered by the judgment that has been cited by the learned counsel for the petitioner, which has been referred supra.

10. The Hon'ble Supreme Court has categorically held in the above judgment that the accused persons, who are similarly placed being granted bail by the same Court or by a higher Court, cannot be a ground for the detaining authority to come to such a subjective satisfaction without there being any materials to substantiate the same. This by itself reflects non application of mind on the part of the detaining authority. Therefore, the order of detention is liable to be interfered with.



H.C.P(MD)No.726 of 2022

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.13/2022 dated 26.04.2022 passed by the second respondent is set aside. The detenu, viz., Selvakumar, son of Marimuthu, aged 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[M.S.R.,J.] & [N.A.V.,J.]
18.11.2022

Index : Yes/No
Internet : Yes
PJJ

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai-600 009.
2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Perambalur District.
3. The Superintendent of Prison,
Trichy Central Prison,
Trichy District.



H.C.P(MD)No.726 of 2022

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

WEB COPY



WEB COPY



H.C.P(MD)No.726 of 2022

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

PJL

H.C.P.(MD)No.726 of 2022

18.11.2022