



HCP(MD)No.764 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.10.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.764 of 2022

Esakkiammal

.. Petitioner/mother of the
detenu

Vs

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600009

2. The Commissioner of Police,
Tirunelveli City,
Tirunelveli District

3. The Superintendent,
Central Prison,
Palayamkottai
Tirunelvlei District

4. The Inspector of Police,
Thatchanallur Police Station,
Tirunelveli District

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records passed in detention order No.21/BCDFGISSSV/2022, dated 03.03.2022, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body of person of the petitioner's son namely, Sankar, S/o.Karuppasamy, aged 35 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.T.Selvakumaran

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Sankar, S/o.Karuppasamy, aged 35 years. The detenu has been detained by the second respondent by his order in No.21/BCDFGISSSV/2022, dated 03.03.2022, 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 the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he has mainly focused his argument on the ground that the detaining authority after recording the fact that the bail application filed by the detenu was pending before the concerned Court, came to a conclusion that there is likelihood of the detenu being granted bail on the ground that in an earlier case, the same detenu was granted bail by this Court in CrI.O.P(MD)No.14281/2019 dated 04.10.2019. The learned counsel further submitted that the bail order that was relied upon by the detaining authority pertained to a case where there was no previous case against the detenue whereas the present case, there are previous cases and hence, the order that was relied upon by the detaining authority cannot be considered to be a similar case.

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***



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244) to substantiate his submission.

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6. The main ground that was urged by the learned counsel for the petitioner is that the bail application filed before the Court below was pending. However, the detaining authority took into consideration the bail that was granted in the earlier case CrI.O.P.(MD)No.14281 of 2019 dated 04.10.2019 by this Court. 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. On carefully going through the bail order passed in CrI.O.P. (MD)No.14281/2019 dated 04.10.2019, we find that this Court has granted bail by considering the fact that there was no previous case against the



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detenu was pending at that point of time. In view of the same, this order relied upon by the detaining authority cannot be considered to be a similar case like the case on hand. It is therefore clear that there is total 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.



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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.21/BCDFGISSSV/2022, dated 03.03.2022 passed by the second respondent is set aside. The detenu, viz. Sankar, S/o.Karuppasamy, aged 35 years, 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.]
14.10.2022

Index : Yes/No
Internet : Yes
PJJ

To

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