



HCP(MD)No.799 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 28.11.2022

CORAM

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

H.C.P.(MD)No.799 of 2022

Gunasekaran

.. Petitioner / detenu

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Magistrate and District collector
Office of the District Magistrate and District Collector
Dindigul District, Dindigul.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District

.. Respondents

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 of the respondent No.2 in Detention Order No.38/2022 dated 04.05.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Gunasekaran, son of Annakamuthevar, aged about 38 years, now confining as Drug Offender at



WEB COPY



HCP(MD)No.799 of 2022

Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by N. ANAND VENKATESH,J.)

The petitioner is the detenu viz., Gunasekaran aged about 38 years, S/o.Annakamuthevar. The detenu has been detained by the second respondent by his order in Detention Order No.38/2022 dated 04.05.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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



HCP(MD)No.799 of 2022

focus his argument on the ground that the detaining authority has taken into consideration the order passed in CrI.M.P.No.1088/2018 dated 15.03.2018 and came to the conclusion that in a similar case bail has been granted and hence, there is likelihood of the detenu let out on bail. The learned counsel submitted that that in similar case, bail was granted only under Section 167(2) Cr.P.C., since final report was not filed within 180 days. Therefore, under such circumstances, the bail order, which was passed in a case under Section 167(2) Cr.P.C., cannot be considered to be a similar one and hence, the detention order is liable to be interfered with.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. 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. He would further submit that the detenu was arrested on 20.02.2022 and remanded to judicial custody on 25.02.2022 and the investigation has been completed and final report was filed before the EC Court, Madurai on 19.07.2022 within the stipulated period and the same has been taken on file in C.C.No.601/2022.



HCP(MD)No.799 of 2022

5. On carefully going through the detention order, it is seen that the detaining authority had taken note of the fact that the detenu has not filed any bail petition in Crime No.71/2021, which involved commercial quantity. It is further seen that in the present case, the quantity involved is a commercial quantity and hence unless the requirement under Section 37 of the NDPS Act is satisfied, there is no question of granting bail to the accused person, whereas, in the order that was relied upon by the detaining authority, bail was granted under Section 167(2) Cr.P.C. since final report was not filed within 180 days and hence, the similar case that has been relied upon by the detaining authority is not similar to the facts of the ground case. It, therefore, reflects non application of mind on the part of the detaining authority.

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

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.38/2022 dated 04.05.2022 passed by the



HCP(MD)No.799 of 2022

second respondent is set aside. The detenu, viz., Gunasekaran S/o.Annakamuthevar, aged about 38 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.)
28.11.2022

Index : Yes/No

Internet : Yes

RR

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The District Magistrate and District collector
Office of the District Magistrate and District Collector
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.799 of 2022

M.S.RAMESH, J.
and
N. ANAND VENKATESH, J.

RR

H.C.P.(MD)No.799 of 2022

28.11.2022