



HCP(MD)No.805 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.805 of 2022

Meenakshi

... Petitioner
/Wife of the Detenu

Vs.

1.The State of Tamil Nadu,
represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli 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 connected with
the detention order passed by the Respondent No.2 in H.S.(MD)Confdl.No.



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199/2021 dated 23.12.2021 on the file of the District Collector and District Magistrate, Thoothukudi District, the second respondent herein, branding the detenu by name, Maharajan, son of Somu, aged 37 years, as “Sexual Offender”, who is now confined in Central Prison, Palayamkottai, Tirunelveli District, and quash the impugned order of detention and set him at liberty forthwith.

For Petitioner : Mr.P.M.Vishnuvarthan

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Maharajan, son of Somu, aged about 37 years. The detenu has been detained by the second respondent by his detention order in H.S(MD)Confdl.No.199/2021 dated 23.12.2021 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.We have heard the learned counsel appearing for the petitioner and



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the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though many grounds have been raised in the petition, the learned counsel for the petitioner focussed his argument on the ground, wherein, the detaining authority, after having found that the detenu has not filed any bail petition, relied upon an order passed in Cr.M.P.No.306/19 dated 24.01.2019. and came to a conclusion that bail has been granted in similar cases, hence, there is a likelihood of the detenu coming out on bail. It is submitted by the learned counsel for the petitioner that the subjective satisfaction that has been arrived at by the detaining authority at Paragraph No.6 of the order is not supported by any materials and the facts pertaining to the order relied upon by the detaining authority is not a similar case. Therefore, the same also suffers from non application of mind.

4. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector, Tiruchirappalli District & another]**.



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5. 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 there is a real possibility of granting bail by the competent Court.

6. The satisfaction that has been arrived at by the detaining authority is merely on surmises and it is not based on any materials that has been placed before the detaining authority. At this point of time, it will be relevant to take note of the Full Bench judgment, which has been referred *supra*.

7. The relevant portions are extracted hereunder:

“24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of



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constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with [Article 22](#) of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him--

- (a) that there is a real possibility of his being released on bail, and
- (b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck



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down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court.

28. It is neither possible nor advisable catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. That is why there is no provision in the Act in that regard and the matter is left to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.”

8. It is clear from the above that the detenu is in custody and he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it was based merely on the presumption made by the detaining authority, the same reflects non application of mind on the part of the detaining authority.

9. We have carefully gone through the bail order relied upon by the detaining authority passed in Cr.M.P.No.306/19, and we find that the accused therein was aged about 21 years and the victim girl was aged 17



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years and there was some relationship between them. The Court took into consideration the said fact and also the long incarceration of 58 days already suffered by the accused and granted bail. In the present case, no bail petition was filed by the detenu for a considerable period of time and this is a case where the detenu was aged about 37 years and the victim girl was aged about 14 years. In view of the same, the bail order relied upon by the detaining authority cannot be considered to be a case with similar facts. This clearly reflects the non application of mind by the detaining authority. Therefore, the order of detention is liable to be interfered with.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(MD)Confdl.No.199/2021 dated 23.12.2021 passed by the second respondent is set aside. The detenu, viz., Maharajan, aged about 37 years, son of Somu, 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
PJL



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To:

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Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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