



HCP(MD)No.795 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.795 of 2022

Sivachandran

... Petitioner / Brother of the Detenu

Vs.

1.State of Tamil Nadu,
Rep by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records leading to the the detention of the petitioner's brother namely Shanmugavignesh @ Vicky,



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S/o.Lakshmanan, aged about 26 years vide detention order dated 12.10.4.2022 made in H.S(M)Confdl.No.69/2022 passed by the second respondent and quash the same and consequently direct the respondents to produce the body of person of the detenu now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Vishnuvardhan

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the brother of the detenu viz., Shanmugavignesh @ Vicky, aged about 26 years, S/o.Lakshmanan. The detenu has been detained by the second respondent by his order in H.S(M)Confdl.No.69/2022 dated 12.04.2022 holding him to be a "Goonda", as contemplated under 2(f) of the 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 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 the competent Court.

4. 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.

5. 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.



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6. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

7. Apart from the other grounds, the main ground that was urged by the learned counsel for the petitioner is that the detaining authority after taking note of the fact that no bail petition was pending as on the date of passing of the detention order, took into consideration the order passed in CrI.O.P(MD)No.23893 of 2016 and came to the conclusion that there is a likelihood of the accused persons being granted bail.

8. The learned counsel for the petitioner submitted that the order that was relied upon by the detaining authority does not pertain to a similar case and hence, the detention order suffers from non-application of mind.

9. The learned Additional Public Prosecutor, on instructions, submitted that investigation was completed and final report was filed and the case is now pending in S.C.No.126 of 2022 on the file of the First Additional District Judge, Tuticorin and the next date of hearing is 26.10.2022 for framing of charges.



10. We have carefully gone through the order passed in Crl.O.P(MD)No.23893 of 2016 and in that case, this Court granted bail on the ground that the investigation was completed and final report was filed before the concerned Court. It is therefore, clear that this order relied upon by the detaining authority cannot be considered to be a similar case and hence, the detention order suffers from non application of mind.

11. 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*.

12. 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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13.In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S(M)Confdl.No.69/2022 dated 12.04.2022, passed by the second respondent is set aside. The detenu, viz., Shanmugavignesh @ Vicky, aged about 26 years, S/o.Lakshmanan, 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
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