

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.10.2022**

CORAM

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

H.C.P.(MD)No.793 of 2022

Santhi Inbaraj

... Petitioner / Mother of Detenue

/Vs./

- 1.The State of Tamil Nadu represented by its
Principal Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil,
Kanniyakumari District.
- 3.The Superintendent,
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 records relating to the order passed by the second respondent dated 18.04.2022 in P.D.No.22/2022 and quash the same and direct the respondents to produce the person or body of the petitioner's son, Mr.Davidraj @ David S/o.Inbaraj, aged about 26,

Kalivilai, Azhaganparai Post, Mandaikadu Village, Kalkulam Taluk, Kanyakumari District now confined in Central Prison Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Dilip Kumar

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., Davidraj @ David, S/o.Inbaraj aged about 26 years. The detenu has been detained by the second respondent by his order in P.D.No.22/2022 dated 18.04.2022 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.

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 that 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* satisfied 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.

6. Apart from the other grounds, the main ground that was urged by the learned counsel appearing for the petitioner is that the detaining authority, after taking note of the fact that the bail petition filed by the

petitioner is pending, relied upon the order passed in C.M.P.No.3468 of 2019 and came to the conclusion that it is a similar case and hence, there was a likelihood of the detenu coming out on bail.

7. The learned Additional Public Prosecutor strongly opposed this Habeas Corpus Petition.

8. We have carefully gone through the order passed in C.M.P.No.3468 of 2019. It is seen that the Court had granted bail on the ground that the co-accused have already been released on bail and that the accused had suffered incarceration for more than 25 days and the facts of that case pertaining to seizing of vehicle had been taken into consideration by the concerned Court. By no stretch, the order passed in C.M.P.No.3468 of 2019 can be considered to be a similar case and there is clear non-application of mind on the part of the detaining authority. The impugned detention order is therefore liable to be quashed.

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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.22/2022, dated 18.04.2022, passed by the second respondent is set aside. The detenu, viz., Davidraj @ David, S/o.Inbaraj, aged about 26 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.)
19.10.2022

Index : Yes/No
Internet : Yes
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J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

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To:

- 1.The State of Tamil Nadu represented by its
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- 2.The District Collector and District Magistrate,
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Kanniyakumari District.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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