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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED **: 18.11.2022**

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.792 of 2022

Anto alias Anto Nallaiah .. Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District.
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai,
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 to call for the entire records connected with the detention order of the second respondent in detention order M.H.S.Confdl.No.30/2022, dated 05.04.2022 and quash the same and to direct the respondents to produce the body or person of the detenu by name, Anto alias Anto Nallaiah, son of Balasingh Devadass, aged about 25 years, now confining as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Prakash

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

The petitioner is the detenu viz., Anto alias Anto Nallaiah, son of Balasingh Devadass, aged about 25 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.30/2022, dated 05.04.2022, holding him to be a "Goonda", as contemplated under Section

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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. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority after being aware of the fact that no bail petition was filed by the detenu, placed reliance upon the order passed in Crl.M.P.No.1805 of 2018 and came to a conclusion that there is a likelihood of the detenu being granted the bail. The learned counsel for the petitioner submitted that the order relied upon by the detaining authority is not a similar case, since in the present case, the accused persons said to have murdered a witness.

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4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. 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.

5. The learned Additional Public Prosecutor further submitted that the investigation was completed and final report was filed and it was taken on file by the IV Additional District and Sessions Court, Tirunelveli, in S.C.No.312 of 2022.

6. The detaining authority was aware of the fact that the detenu had not filed any bail application and inspite of the same, came to a conclusion that there is a possibility of the detenu filing a bail petition and bail being granted in his favour. To come to such a conclusion, the

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detaining authority took note of the order passed in Crl.M.P.No.1805 of 2018. We have carefully considered the order and it is seen that the bail was granted in that case to the accused persons therein on the ground that there were no previous antecedents against the accused and the material part of the investigation was completed and the accused persons had already suffered incarceration for a sufficient period. The bail order that was relied upon by the detaining authority cannot be considered to be a similar case and it, therefore, clearly reflects the non-application of mind on the part of the detaining authority to come to the subjective satisfaction.

7. In view of the above, the detention order suffers from non-application of mind on the part of the detaining authority and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.30/2022, dated 05.04.2022 passed by the second respondent is set aside. The detenu, viz., Anto alias Anto

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Nallaiah, son of Balasingh Devadass, aged about 25 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.)

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Index : Yes/No
Internet : Yes
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Madurai Bench of Madras High Court,
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