

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.800 of 2022

Kannan @ Rajaram

... Petitioner / Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

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

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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 of the respondent No.2 in BCDFGISSSV.No.19/2022 dated 28.03.2022 and quash the same and direct the respondents to produce

the body or person of the detenu by name Kannan @ Rajaram, S/o.Rajendran, aged about 42 years, now detained as “Drug Offender” at 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

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Kannan @ Rajaram, aged about 42 years, S/o.Rajendran. The detenu has been detained by the second respondent by his order in BCDFGISSSV.No.19/2022 dated 28.03.2022 holding him to be a "Drug Offender", as contemplated under 2(3) of the 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, 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.

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 while making representation, a specific request was made to furnish Tamil version of all those documents, which are in English. Such documents, for which the translation was sought for, was the bail order that was passed in the similar case. However, Tamil translation was not provided to the detenu and hence, the detenu was not able to make an effective representation. In view of the same, the learned counsel submitted that there is infraction of fundamental rights of the detenu. In view of the same, the detention order suffers from illegality.

8. We have carefully considered the submission made by the learned counsel for the petitioner. It is seen from the representation that a specific request has been made for Tamil translation of the bail order that was relied upon by the detaining authority to come to a conclusion that there is a likelihood of the detenu being granted bail. However, the Tamil translation of the bail order was not furnished to the detenu and hence, the detenu was

not able to make an effective representation and thereby, fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India has been violated.

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 BCDFGISSSV.No.19/2022 dated 28.03.2022, passed by the

second respondent is set aside. The detenu, viz., Kannan @ Rajaram, aged about 42 years, S/o.Rajendran, 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

Ns/Ta

To:

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

HCP(MD)No.800 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

Ns/Ta

H.C.P.(MD)No.800 of 2022

14.10.2022