

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.823 of 2022

Maruthappandian

... Petitioner / Detenu

Vs.

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

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

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 connected with the detention order passed in M.H.S.Confdl.No.37/2022 dated 11.04.2022

on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Maruthapandian, aged about 21 years, S/o.Azhagudurai, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Maruthapandian, aged about 21 years, S/o.Azhagudurai. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.37/2022 dated 11.04.2022 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.

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 the Detaining Authority, after recording the fact that there was no bail application filed by the detenu, came to a conclusion that the detenu will file an application in future and in similar case, bail was granted by the Court. To substantiate the same, the detaining authority has taken into consideration the bail order passed in Cr.M.P.No.5531 of 2021. The learned counsel for the petitioner submitted that the order that was relied upon by the detaining authority is not a similar case. Hence, the detention order suffers from non application of mind.

8.We have carefully gone through the order passed in Cr.M.P.No.5531 of 2021 that was relied upon by the detaining authority. We find that the bail was granted by considering the long incarceration by the accused therein and also the fact that there was no previous cases against the accused therein and there is no serious motive made on the side of the prosecution. The reasons that have been assigned in the said bail order make it very clear

that the case cannot be considered as a similar case as that of a case on hand. In view of the same, the detention order suffers from non application of mind.

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 M.H.S.Confdl.No.37/2022 dated 11.04.2022, passed by the

second respondent is set aside. The detenu, viz., Maruthapandian, aged about 21 years, S/o.Azhagudurai, 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,
Secretariat,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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