



H.C.P.(MD)No.831 of 2022

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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.831 of 2022

Vanumamalai @ Kuralivanumamalai

.. Petitioner

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



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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 passed in M.H.S.Confdl.No.39/2022, dated 12.04.2022 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, Vanumamalai @ Kuralivanumamalai, son of Krishnan, aged about 35 years, 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.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

The petitioner is the detenu viz., Vanumamalai @ Kuralivanumamalai, son of Krishnan, aged about 35 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl. No.39/2022, dated 12.04.2022, holding him to be a "Goonda", as



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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 main ground that was canvassed by the learned counsel for the petitioner is that the detaining authority inspite of being aware of the fact that the detenu was yet to be granted bail in the second adverse case and in the ground case, came to a conclusion that there is a likelihood of the detenu being granted bail by relying upon the order passed in CrI.M.P. No.8022 of 2019. The learned counsel submitted that the order that was relied upon by the detaining authority is not a similar case since the bail was granted in that case on the ground that an affidavit being filed by the defacto complainant that no such occurrence took place. Hence, the learned counsel



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submitted that it is clearly a non-application of mind on the part of the detaining authority.

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. We have carefully considered the submissions made on either side and also materials available on record.

6. Admittedly, the detenu has not been granted bail in the second adverse case and in the ground case. The detaining authority has stated that the detenu has not filed any bail application in the second adverse case. In spite of the same, the detaining authority has come to a



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conclusion that there is a likelihood of the detenu being granted bail by relying upon the order passed in CrI.M.P.No.8022 of 2019.

7. On carefully going through the order relied upon the detaining authority, it is seen that the bail was granted based on the affidavit filed by the defacto complainant to the effect that no such occurrence had taken place in that case. By no stretch, the order relied upon by the detaining authority can be considered to be a similar case. It, therefore, clearly reflects the non-application of mind on the part of the detaining authority to come to the subjective satisfaction.

8. 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.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl. No.39/2022, dated 12.04.2022 passed



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by the second respondent is set aside. The detenu, viz., Vanumamalai @ Kuralivanumamalai, son of Krishnan, aged about 35 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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