

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.837 of 2022

Muthuesakki alias Esakki

... 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.41/2022 dated 18.04.2022 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

Muthuesakki alias Esakki aged about 23 years S/o.Marimuthu 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

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Muthuesakki alias Esakki, S/o.Marimuthu aged about 23 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.41/2022 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 detenu has not filed any bail

petition, relied upon the order passed in Cr.M.P.No.5531 of 2021 and came to the conclusion that it is a similar case and hence, there is a likelihood of the detenu coming out on bail.

7. The learned Additional Public Prosecutor strongly opposed this Habeas Corpus Petition by filing his counter.

8. We have carefully gone through the order passed in Cr.M.P.No. 5531 of 2021. The Court, while granting bail, had taken into consideration the long incarceration of the accused therein for merely 81 days and it was also reported by the learned Public Prosecutor that there was no previous case pending against the accused therein and no serious objections were raised. It is therefore clear that the order passed in Cr.M.P.No.5531 of 2021 cannot be considered to be a similar case. Hence, the detention order suffers from non-application of mind. 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 M.H.S.Confdl.No.41/2022, dated 18.04.2022, passed by the second respondent is set aside. The detenu, viz., Muthuesakki alias Esakki, S/o.Marimuthu, aged about 23 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 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.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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