



H.C.P.(MD)No.868 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.868 of 2022

C.Menaga

.. Petitioner

Vs.

1.State of Tamil Nadu, rep. by its
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Trichy City,
Trichy.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli,
Trichy 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 records relating to the detention order passed by the second respondent in his proceedings C.No. 58/Detention/C.P.O/T.C/2022, dated 26.04.2022 and quash the same and direct the respondents to produce the person or body of the detenu namely, Pavithran @ Pavi, son of Chandhrasekar, aged about 25 years, (now detained at the Central Prison, Trichy), before this Court and set him at liberty.

For Petitioner : Mr.N.Anandakumar

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 mother of the detenu viz., Pavithran @ Pavi, son of Chandrasekar, aged about 25 years. The detenu has been detained by the second respondent by his order in C.No. 58/Detention/C.P.O/T.C/2022, dated 26.04.2022, holding him to be a



H.C.P.(MD)No.868 of 2022

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"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 main ground that was urged by the learned counsel for the petitioner is that the detaining authority had come to a conclusion that there is a likelihood of the detenu coming out on bail based on the order passed in favour of the detenu in the third adverse case in CrI.M.P.No.1830 of 2022. The learned counsel for the petitioner submitted that the said order cannot be considered to be a similar case, since that was a case where the offence involved is under Section 392 r/w.397 of IPC, whereas, in the ground case, the offence is involved under section 392 and 380 of IPC. That apart, the detenu was in custody in three adverse cases and one ground case



H.C.P.(MD)No.868 of 2022

and the detaining authority was aware of the fact that the bail application that was filed in the second adverse case in CrI.M.P.No.7923 of 2022, was dismissed on 22.04.2022. Whereas, the bail order that was relied upon by the detaining authority was taken on 21.04.2022. Hence, the learned counsel submitted that it is clearly a non-application of mind on the part of the detaining authority to come to a subjective satisfaction.

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.



H.C.P.(MD)No.868 of 2022

WEB COPY

6. There are totally four adverse cases and one ground case against the detenu. The detenu was granted bail in the third adverse case in Crime No.129 of 2022 in CrI.M.P.No.1830 of 2022 mainly on the ground that the property has been recovered and no one was injured in the incident and the detenu had suffered incarceration for 35 days. That was a case where the offence involved is under Section 392 r/w.397 of IPC.

7. Insofar as the ground case is concerned, the offence involved is under sections 392 and 380 of IPC in Crime No.142 of 2022. The detaining authority has taken note of the fact that the bail petition that was filed in the ground case as well as in the second adverse case, was dismissed by an order, dated 22.04.2022. The bail order that was granted in favour of the detenu in CrI.M.P.No.1830 of 2022 does not involve similar offence to that of the ground case.

8. That apart, even after the bail order was passed in CrI.M.P.No.1830 of 2022 on 21.04.2022, the bail petition filed in the ground case and the second adverse case came to be dismissed subsequently, on



H.C.P.(MD)No.868 of 2022

WEB COPY

22.04.2022. Hence, even though the bail was granted in one adverse case on 21.04.2022, the same was not taken into consideration and the bail petition filed in the second adverse case and the ground case came to be dismissed on 22.04.2022. These two factors clearly demonstrate that there is non-application of mind on the part of the detaining authority to come to the subjective satisfaction 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 C.No.58/Detention/C.P.O/T.C/2022, dated 26.04.2022 passed by the second respondent is set aside. The detenu, viz., Pavithran @ Pavi, son of Chandrasekar, 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.)
18.11.2022

Index : Yes/No
Internet : Yes
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H.C.P.(MD)No.868 of 2022

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- 3.The Superintendent of Prison,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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