



HCP(MD)No.903 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.10.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.903 of 2022

Kaluvayee

.. Petitioner/mother of the
Detenu

Vs

1. The Principal Secretary to Government,
State of Tamil Nadu ,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai-600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
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 relating to the



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detention order passed by the 2nd Respondent in No.13/BCDFGISSSV/2022 dated 27.04.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name, Sadaiyandi, S/o.Andi Thevar, aged 43 years, now confined in Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Sadaiyandi, S/o.Andi Thevar, aged 43 years. The detenu has been detained by the second respondent by his order in No.13/BCDFGISSSV/2022 dated 27.04.2022 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. 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.

3. 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.

4. 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.

5. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority, after taking note of the fact that there was no bail petition filed by the detenu is pending before the



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competent Court, as on the date of passing the detention order, relied upon the order passed in Cr.M.P.No.4721/2018 dated 12.10.2018 and came to a conclusion that there is a likelihood of the detenu being granted bail. According to the learned counsel appearing for the petitioner, the similar case that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu being released on bail, is not a similar case. Hence, the detention order suffers from non application of mind.

6. We have carefully considered the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

7. We have carefully gone through the detention order as well as the bail order passed in Cr.M.P.No.4721/2018 dated 12.10.2018. There is no material placed before this Court that as to how the detaining authority came to a conclusion that efforts are being taken to file a bail petition. That apart, the bail order relied upon by the detaining authority passed in Cr.M.P.Nos. 4721 & 4679/2018 dated 12.10.2018 wherein bail was granted to the



accused therein on the ground that charge sheet has already been laid and the accused had suffered incarceration for nearly 127 days and the co-accused have been enlarged on bail. The facts of that case cannot be treated to be a similar case since in the present case, the detenue did not file any bail petition. In view of the same, we find that the subjective satisfaction arrived at by the detaining authority with regard to the likelihood of the detenu coming out on bail suffers from non-application of mind on the part of the detaining authority.

8.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*.

9.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



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application of mind on the part of the detaining authority. Therefore, the order of detention is liable to be interfered with.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.13/BCDFGISSSV/2022 dated 27.04.2022 passed by the second respondent is set aside. The detenu, viz., Sadaiyandi, S/o.Andi Thevar, aged 43 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.)
28.10.2022

Index : Yes/No
Internet : Yes
PJJ

To

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2. The Commissioner of Police,
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