



HCP(MD)No.915 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 30.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU

AND

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.915 of 2022

Subbulakshmi

.. Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Police,
Tirunelveli City Police Commissioner Officer,
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
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 records pertaining to the detention order in No.31/BCDFGISSSV/2022 dated 29.03.2022 passed by the second respondent herein and quash the same as illegal by setting the detenu namely, Balasubramanian @ Ammavadai, aged about 47 years, S/o.Velupillai, and set him at liberty, now detained at Central Prison, Palayamkottai, Tirunelveli District.

For Petitioner : M/s.K.Abiya

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Balasubramanian @ Ammavadai, aged about 47 years, S/o.Velupillai. The detenu has been detained by the second respondent by his order in No. 31/BCDFGISSSV/2022 dated 29.03.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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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 appearing for the petitioner would mainly focus his argument on the ground that the detaining authority after having found that no bail petition has been moved by the detenu, relied upon the order passed in CrI.M.P.No.893 of 2020, dated 19.12.2020 and has come to a conclusion that there is a likelihood of the detenu coming out on bail. The learned counsel submitted that the the bail order relied upon by the detaining authority is not similar to the present case.

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 there is a real possibility of granting bail by the competent Court.



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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. 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*.

7. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that there was no delay in considering the representation. 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.

8. The learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and final report was filed and it was taken on file by the Special Court for POSCO Act cases,



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Tirunelveli, in Spl.S.C.No.58 of 2022 and the case stands posted for examination of witnesses, on 07.10.2022.

9. We carefully gone through the order passed in CrI.M.P. No.893 of 2020, dated 19.12.2020 and we find that it was a case where the Court took into consideration the pandemic situation and granted bail. It was not an order passed on merits. In view of the same, the order passed in CrI.M.P.No.893 of 2020, dated 19.12.2020 cannot be held to be a similar case and the same clearly reflects non- application of mind on the part of the detaining authority.

10. 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.31/BCDFGISSSV/2022 dated 29.03.2022 passed by the second respondent is set aside. The detenu, viz., Balasubramanian @



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Ammavadai, aged about 47 years, S/o.Velupillai, 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.)
30.09.2022

Index : Yes/No
Internet : Yes
RM



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