



HCP(MD)No.913 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.913 of 2022

Velayudham @ Ajith @ Ajithkumar

.. Petitioner/ 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.12/BCDFGISSSV/2022 dated 26.04.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name, Velayudham @ Ajith @ Ajithkumar, aged 23 years, S/o.Manikandan, now confined in Central Prison, Palayamkottai, 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 detenu viz., Velayudham @ Ajith @ Ajithkumar, aged 23 years, S/o.Manikandan. The detenu has been detained by the second respondent by his order in No.12/BCDFGISSSV/2022 dated 26.04.2022 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.



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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 was aware of the fact that the detenu was in remand in the 5th adverse case is concerned, the bail petition



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filed by the detenu was dismissed by an order dated 18.04.2022. However, the detaining authority by relying upon the order passed in Cr.M.P.No. 1513/2022 dated 11.04.2022 came to a conclusion that there is a likelihood of the detenu coming out on 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.The learned counsel for the petitioner further submitted that insofar as the ground case is concerned, the bail petition filed by the detenu was dismissed and the subsequent bail application was pending before the Sessions Court. After taking note of the same, the detaining authority relied upon the order passed in Cr.M.P.No.1996/2019 dated 06.06.2019 and came to a conclusion that there is a likelihood of the detenu being granted bail in the ground case. Hence, the learned counsel for the petitioner submitted that the order passed in Cr.M.P.No.1996/2019 dated 06.06.2019 cannot be considered to be similar to the ground case.



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7. 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.

8. We have carefully gone through the bail order relied upon by the detaining authority passed in Cr.M.P.No.1513/2022 dated 11.04.2022. That was a case where there was no previous case against the accused and the injured had already been discharged from the hospital. However, in the present case, there were four previous cases against the detenu and hence the order passed in Cr.M.P.No.1513/2022 dated 11.04.2022 cannot be considered to be a similar case to that of the 5th adverse case in which the accused person was in remand. That apart, the previous bail application that was filed by the detenu was dismissed through an order dated 18.04.2022 and after the bail was granted in the so called similar case on 11.04.2022.

9. Insofar as the ground case is concerned, the detaining authority relied upon the order passed in Cr.M.P.No.1996/19. We carefully went through the order passed in Cr.M.P.No.1996/19. It is seen that in that case, there were two previous cases against the accused therein pertaining to the



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year 2015 and 2016. In the present case, the previous cases were also of the year 2022 and hence the order in Cr.M.P.No.1996/19 cannot be considered to be a similar case. 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.

10.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*.

11.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.



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12.In the result, the Habeas Corpus Petition is allowed and the order of detention in No.12/BCDFGISSSV/2022 dated 26.04.2022 passed by the second respondent is set aside. The detenu, viz., Velayudham @ Ajith @ Ajithkumar, aged 23 years, S/o.Manikandan, 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:

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,



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Madurai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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