

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.09.2022**

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.933 of 2022

Sivaramakrishnan

.. Petitioner

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 to call for the entire records connected with the detention order of the respondent No.2 in No.06/BCDFGISSSV/2022, dated 27.01.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Sivaramakrishnan, son of Ramamoorthy, aged about 35 years, now detained as “Goonda” at Madurai Central Prison before this Court and set him at liberty forthwith.

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., Sivaramakrishnan, son of Ramamoorthy, aged about 35 years. The detenu has been detained by the second respondent by his order in No.06/BCDFGISSSV/2022, dated 27.01.2022 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 many grounds have been raised in the petition, the learned counsel for the petitioner focused his argument on the ground that the detaining authority at the time of passing the order has taken into consideration the order passed in a bail petition in Crl.M.P.No.6126 of 2017 on 28.11.2017 and has come to a conclusion that the ground case is also similar and therefore, there is a likelihood of the detenu being released on bail.

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.

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. In the considered view of this Court, the case which was referred by the detaining authority is not a similar case, since in that case, the investigation was completed and final report was filed and taking that into consideration, bail was granted. Whereas, in the present case, the investigation is pending and therefore, the reference to the similar case reflects non application of mind on the part of the detaining authority and therefore, the same is liable to be interfered with by this Court.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.06/BCDFGISSSV/2022, dated 27.01.2022 passed by the second respondent is set aside. The detenu, viz.,Sivaramakrishnan, son of Ramamoorthy, aged about 35 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.)
06.09.2022

Index : Yes/No
Internet : Yes
rm

Copy to

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Madurai Bench of Madras High Court,
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