



HCP(MD)No.948 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.948 of 2022**

Loganathan

... Petitioner / Detenu

**Vs.**

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

2. The District Collector and District Magistrate,  
Theni District,  
Theni.

3. The Superintendent of Prison,  
Central Prison,  
New Jail Road,  
Madurai.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to  
issue a Writ of Habeas Corpus, calling for the entire records connected with



HCP(MD)No.948 of 2022

the detention order passed by the 2<sup>nd</sup> Respondent in Detention Order No. 20/2022 dated 29.03.2022, and quash the same and direct the respondents to produce the body or person of the detenu, by name, Loganathan, aged 28 years, son of Dhanapal, now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Karthick

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., Loganathan, aged 28 years, son of Dhanapal. The detenu has been detained by the second respondent by his detention order in Detention Order No.20/2022 dated 29.03.2022 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.

WEB COPY

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 following grounds:

(i) there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay, and

(ii) the detaining authority was swayed by the fact that the detenu is attempting to file a bail petition and hence, it is submitted by the learned counsel for the petitioner that the subjective satisfaction that has been arrived at by the detaining authority is not supported by any materials. Therefore, the same also suffers from non application of mind.

4. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector, Tiruchirappalli District & another]**.



HCP(MD)No.948 of 2022

WEB COPY

5. 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.

6. The Detention Order in question was passed on 29.03.2022. The petitioner made a representation dated 28.05.2022. The representation was received on 06.06.2022. Thereafter, remarks were submitted on 07.06.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 14.06.2022.

7. It is the contention of the petitioner that there was a delay of 5 days in considering the representation by the Hon'ble Minister for Electricity, Prohibition and Excise Department after the Deputy Secretary dealt with it, of which, 2 days were Government Holidays and hence, there was



inordinate delay of 3 days in considering the representation.

WEB COPY

8. The learned counsel further contended that the detaining authority has considered the fact that the detenu is attempting to file a bail petition before the competent Court and that bail was granted in similar cases. Therefore, the detaining authority came to the conclusion that there is an imminent possibility of the detenu coming out on bail. This finding was rendered without any material and hence, the similar case that has been relied upon by the detaining authority is not similar to that of the case of the detenu.

9. 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*.

10. The relevant portions are extracted hereunder:

“24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law



WEB COPY



HCP(MD)No.948 of 2022

prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with [Article 22](#) of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him--





HCP(MD)No.948 of 2022

WEB COPY

**12.** We have carefully gone through the Detention Order. The detaining authority has specifically stated in the detention order that the detenu has not filed any bail application. However, the detaining authority has taken into consideration the bail orders that has been granted in similar cases and has come to the conclusion that there is a likelihood of the detenu coming out on bail after a lapse of time. In view of the same, the bail order relied upon by the detaining authority cannot be considered to be a similar case. This is a very vague finding which is not supported by any material and the same goes against the settled principles of law. Therefore, the order of detention is liable to be interfered with.

**13.** In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.20/2022 dated 29.03.2022 passed by the second respondent is set aside. The detenu, viz., Loganathan, aged 28 years, son of Dhanapal, 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**



HCP(MD)No.948 of 2022

Index : Yes/No  
Internet : Yes  
PJJ

**To:**

- 1.The Additional Chief Secretary to Government,  
State of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Fort St.George,  
Chennai-600 009.
- 2.The District Collector and District Magistrate,  
Theni District,  
Theni.
- 3.The Superintendent of Prison,  
Central Prison,  
New Jail Road,  
Madurai.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



HCP(MD)No.948 of 2022

**J. NISHA BANU,J.**  
and  
**N. ANAND VENKATESH,J.**

PJL

**H.C.P.(MD)No.948 of 2022**

**30.09.2022**