



HCP(MD)No.1015 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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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.1015 of 2022

Seetha

... Petitioner
/wife of the Detenu

Vs.

1.The State rep. by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Superintendent of Prison,
Central Prison,
Trichy.

4.The Inspector of Police,
All Women Police Station,
Lalgudi,
Trichy District.

...Respondents



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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 the detention order made in Cr.M.P.No.19/2022 dated 15.03.2022 passed by the District Collector and District Magistrate, Tiruchirappalli District, the 2nd Respondent herein, branding the petitioner's husband/detenu, by name Markandan, aged 36 years, son of Pandian, as “Sexual Offender” and quash the same and direct the respondents to produce the body or person of the detenu, who is now confined at Central Prison, Tiruchirappalli, Tiruchirappalli District before this Court and set him at liberty forthwith.

For Petitioner : Mr.T.J.Ebenezer Charles

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Markandan, aged 36 years, son of Pandian. The detenu has been detained by the second respondent by his detention order in Cr.M.P.No.19/2022 dated 15.03.2022 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.

2. The learned counsel for the Petitioner submitted that there is total non application of mind on the part of the detaining authority in taking into consideration the bail order passed in E-bail No.796/2020, dated 02.11.2020, which cannot be considered to be a similar case.

3. In support of his contention, the learned counsel for the Petitioner relied upon the case of ***Rekha .vs. State of Tamil Nadu, through Secretary to Government and another reported in (2011) 5 SCC 244***, wherein, it has been held as follows:

12. In Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr., (2011) 5 SCC 244, this Court while dealing with the issue held :

“7.A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the



bail application number; nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused.....

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner; then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.



27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground.” (Emphasis added)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

13. So far as the appellant’s son is concerned, he had been arrested for the offence related to FIR No.53 (6) 2011 under [Section 302 IPC](#) read with [Section 25\(1-A\) Arms](#)



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Act dated 14.6.2011. The FIR had been lodged against unknown persons, however, appellant's son was arrested on 19.6.2011 in respect of the said offence. Subsequently, the detention order dated 30.6.2011 was passed by the District Magistrate under N.S. Act on various grounds, inter-alia, that the appellant's son was involved in extorting of money and giving shelter to underground members of unlawful association, namely, Kangleipak Communist Party vide notification published in the Gazette of India on 13.11.2009 as his activities were pre-judicial to the security of the State and maintenance of public order.

14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under [Section 17/20](#) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 under Section 20 of the UA (P) Act and released orders in those cases dated 13.12.2010 and 1.6.2011 respectively had been passed.

15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in



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similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law.

4. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents and we have carefully gone through the detention order.

5. On carefully going through the order passed in E.bail.No.796 of 2020 dated 02.11.2020, we find that the bail order that was relied upon by the detaining authority pertains to the case, the accused therein took a stand that he has been falsely roped into the case and the complaint itself was given on the instigation of the husband. It is also seen that this bail was



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considered at the Pandemic period. In the case on hand, admittedly, no bail applicaiton was filed and the order that was relied upon by the detaining authority does not pertains to a similar case. Therefore, the same reflects the non application of mind. Therefore, the order of detention is liable to be interfered with.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.19/2022 dated 15.03.2022 passed by the second respondent is set aside. The detenu, viz., Markandan, aged 36 years, son of Pandian, 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
PJJ

To:

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,



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