



H.C.P.(MD)No.1010 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.11.2022

CORAM

**THE HON'BLE MR.JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

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S.Ayyappan

.. Petitioner / Father of the detenu

Vs

1. State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

.. 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
detention order passed by the second Respondent in P.D.No.19/2022 dated



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07.04.2022 and to quash the same and direct the Respondents to produce the body or person of the detenu by name, Sukumaran @ Sullan, son of Ayyappan, aged about 27 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

N. ANAND VENKATESH, J.

The petitioner is the father of the detenu viz., Sukumaran @ Sullan, son of Ayyappan, aged about 27 years. The detenu has been detained by the second respondent by his order in P.D.No.19/2022 dated 07.04.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

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



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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 learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 16.02.2022. Thereafter the investigation was completed and final report was filed on 16.06.2022 on time before the NDPS Court, Madurai and the same has been taken on file in C.C.No.332/2022. It was further submitted that the case is now posted for the appearance of the accused persons on 07.12.2022.



6. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority after taking note of the fact that no bail petition was filed by the detenu, came to a conclusion that there is a likelihood of the detenu coming out on bail by relying upon the bail order passed in CrI.M.P.No.5126/2019 dated 31.12.2019. 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.

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 detention order as well as the bail order passed in CrI.M.P.No.5126/2019 dated 31.12.2019. It is seen that in that case the quantity involved is 1.250 kgs of Ganja and in the present case, the quantity involved is 21 kgs of Ganja, which is a commercial quantity. Hence, even when a bail petition is considered in this case, there



are stringent conditions provided under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, before bail can be granted. The bail order that was taken into consideration by the detaining authority was pertained to an in-between quantity and the same can never be taken as a similar case. Hence, 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.

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 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



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order of detention is liable to be interfered with.

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11. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.19/2022 dated 07.04.2022 passed by the second respondent is set aside. The detenu, viz., Sukumaran @ Sullan, son of Ayyappan, aged about 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[M.S.R.,J.] & [N.A.V.,J.]
18.11.2022

Index : Yes/No
Internet : Yes
PJL

To

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State of Tamil Nadu,
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Chennai-600 009.
2. The District Collector and District Magistrate,
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3. The Superintendent of Prison,
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Tirunelveli.

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

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