



H.C.P.(MD)No.1067 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1067 of 2022

Prabhakaran

.. Petitioner

Vs.

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,
Office of the District Collector and District Magistrate,
Sivagangai District,
Sivagangai District.

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

.. Respondents



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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 second respondent in Cr.M.P.No.28/Goonda/2022, dated 22.05.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Prabhakaran, son of Thangaraj, aged about 26 years, detained as "Goonda" now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

The petitioner is the detenu viz., Prabhakaran, son of Thangaraj, aged about 26 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.28/Goonda/2022, dated 22.05.2022, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil



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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 several grounds have been raised in the Habeas Corpus Petition, 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 bail petition filed in the ground case was pending. However, the detaining authority came to a conclusion that there is a likelihood of the detenu being granted bail by relying upon the order passed in CrI.O.P.(MD)No.1631 of 2021. The learned counsel submitted that the order relied upon by the detaining authority is not a similar case and therefore, the detention order suffers from non-application of mind on the part of the detaining authority.



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4. 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.

5. The learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and the final report was filed and it was taken on file by the learned Judicial Magistrate, Devakottai, in P.R.C.No.14 of 2022.

6. We have carefully considered the submissions made on either side and also materials available on record.

7. The detaining authority was aware of the fact that the bail application filed by the detenu was pending. We have carefully gone



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through the order passed in CrI.O.P.(MD)No.1631 of 2021. That was a case where the only overt-act, that was attributed against the accused therein, was that he keeping watch over the place and thereby facilitated the other accused persons to commit murder. This Court also took into consideration the long incarceration suffered by the accused therein and also the fact that the deceased in that case was a history-sheeter. The order relied upon by the detaining authority cannot be considered to be a similar case. It, therefore, clearly reflects the non-application of mind on the part of the detaining authority to come to the subjective satisfaction.

8. In view of the above, the detention order suffers from non-application of mind on the part of the detaining authority and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.28/Goonda/2022, dated 22.05.2022, passed by the second respondent is set aside. The detenu, viz., Prabhakaran, son of



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Thangaraj, aged about 26 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.)
02.12.2022

Index : Yes/No

Internet : Yes

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To

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2.The District Collector and District Magistrate,
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