

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.10.2022**

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1144 of 2022

David @ David Johnson

... Petitioner / Detenue

/Vs./

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

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

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in his proceedings C.O.C.No.19/2022 dated 16.04.2022 in detaining the detenue under Section 2(b) of the Tamil Act 14 of 1982 as a Bootlegger and quash the same and direct the respondents to produce the detenue namely David @

David Johnson, S/o.Pandiyan, male aged about 27 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.A.Joseph Jerry

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., David @ David Johnson, S/o.Pandiyan aged about 27 years. The detenu has been detained by the second respondent by his order in Detention Order C.O.C.No. 19/2022 dated 16.04.2022 holding him to be a "Bootlegger", as contemplated under Section 2(b) 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 several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner focussed his argument on the ground that the detaining authority has taken into consideration the fact that the accused, who are similarly placed, have been granted bail by the competent Court.

4.The learned counsel for the petitioner submitted that the detaining authority, without the availability of materials, cannot *ipso facto* satisfied 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.

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. Apart from the other grounds, the main ground that was urged by the learned counsel appearing for the petitioner is that the detaining

authority, after taking note of the fact that the bail petition filed by the petitioner was dismissed, came to the conclusion that there is likelihood of the detenu being granted bail, on the ground that the detenu may file another bail application before the appropriate Court or before the High Court and obtain bail. The learned counsel submitted that this finding rendered by the detaining authority was without any material and hence, the detention order suffers from illegality.

7. The learned Additional Public Prosecutor strongly opposed this Habeas Corpus Petition by filing his counter.

8. Insofar as the main ground that was urged by the learned counsel for the petitioner, the detaining authority has taken note of the fact that the bail application filed by the detenu was dismissed and there was no bail application pending as on the date of passing of detention order. However, the detaining authority has presumed that the detenu may file application in future before the appropriate Court or before the higher Court and obtain bail. The likelihood of the detenu coming out on bail must be based on some materials and it cannot be made on mere presumption. In view of the

same, we find that the detention order suffers from non-application of mind. The impugned detention order is therefore liable to be quashed.

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 order of detention is liable to be interfered with.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.O.C.No.19/2022, dated 16.04.2022, passed by the second respondent is set aside. The detenu, viz., David @ David Johnson,

S/o.Pandiyan, aged about 27 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.)
19.10.2022

Index : Yes/No
Internet : Yes
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To:

- 1.The State of Tamil Nadu represented by its
Principal Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil,
Kanniyakumari District.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

HCP(MD)No.1144 of 2022

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