



HCP(MD)No.1099 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 16.09.2022

CORAM

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

H.C.P.(MD)No.1099 of 2022

Dineshkumar

... Petitioner / Detenu

Vs.

- 1.The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Namakkal Kavignar Maaligai 2nd Floor,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District at
Nagercoil.
- 3.The Secretary to Government of India,
Department of Consumer Affairs,
Food and Consumer Affairs Department,
Room No.270, Krishibhavan,
New Delhi – 110 001.
- 4.The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District.

...Respondents



HCP(MD)No.1099 of 2022

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 in P.D.No.36/2022 dated 31.05.2022 on the file of the 2nd Respondent and quash the same and direct the respondents to produce the detenu or body of the detenu namely Dineshkumar, aged about 25 years, S/o.Paramasivam, now detained in Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Dineshkumar, aged about 25 years, S/o.Paramasivam. The detenu has been detained by the second respondent by his order in P.D.No.36/2022 dated 31.05.2022 holding him to be a "Black Marketeer", as contemplated under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980). The said order is under challenge in this Habeas Corpus Petition.



HCP(MD)No.1099 of 2022

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, wherein, 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* 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.

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.



HCP(MD)No.1099 of 2022

WEB COPY

6. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

7. The main ground that was urged by the learned counsel for the petitioner is that the detenu admittedly did not file any bail application and no bail application was pending as on the date, when detention order was passed. However, the detaining authority took into consideration the conditional bail that was granted to one Raja, in CrI.M.P.No.4097 of 2021 dated 14.07.2021. 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.

8. We have carefully considered the bail order passed in CrI.M.P.No. 4097 of 2021 dated 14.07.2021. We find that bail was granted in this case to one Raja, after taking into consideration the Covid-19 pandemic situation. In view of the same, this bail order cannot be taken to be similar case. It is therefore clear that there is total non-application of mind on the



HCP(MD)No.1099 of 2022

part of the detaining authority. We have considered the order passed in Crl.M.P.No.4097 of 2021 dated 14.07.2021 and conclude that it is not a similar case.

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 P.D.No.36/2022 dated 31.05.2022, passed by the second



HCP(MD)No.1099 of 2022

respondent is set aside. The detenu, viz., Dineshkumar, aged about 25 years, S/o.Paramasivam, 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.)
16.09.2022

Index : Yes/No
Internet : Yes
sm



HCP(MD)No.1099 of 2022

To:

1. The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Namakkal Kavignar Maaligai 2nd Floor,
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District at
Nagercoil.
3. The Secretary to Government of India,
Department of Consumer Affairs,
Food and Consumer Affairs Department,
Room No.270, Krishibhavan,
New Delhi – 110 001.
4. The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.1099 of 2022

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

sm

H.C.P.(MD)No.1099 of 2022

16.09.2022