



HCP(MD)No.1108 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.10.2022

CORAM

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

H.C.P.(MD)No.1108 of 2022

Valathi

.. Petitioner/Detenu

Vs

1. State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
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



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detention order passed by the 2nd Respondent in M.H.S.Confdl.No.47/2022 dated 27.04.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name, Valathi, aged about 22 years, S/o.Sundram, now detained in 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

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Valathi, aged about 22 years, S/o.Sundram. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.47/2022 dated 27.04.2022 holding him to be a "Goonda", as contemplated under Section 2(f) 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.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the following grounds:

(i) there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay, and

(ii) the detaining authority was swayed by the fact that the detenu is attempting to file a bail petition and hence, it is submitted by the learned counsel for the petitioner that the subjective satisfaction that has been arrived at by the detaining authority is not supported by any materials. Therefore, the same also suffers from non application of mind.

4. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector,**



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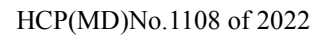
Tiruchirappalli District & another].

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5. 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.

6. The Detention Order in question was passed on 27.04.2022. The petitioner made a representation dated 29.06.2022. Thereafter, remarks were called for by the Government from the Detaining Authority on 05.07.2022. The remarks were duly received on 18.07.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 20.07.2022.

7. It is the contention of the petitioner that there was a delay of 12 days in submitting the remarks by the Detaining Authority, of which 4 days



were Government holidays and hence, there was an inordinate delay of 8 days in submitting the remarks.

8. The second ground that was urged by the learned counsel for the petitioner is that the detenu was in remand in the 5th adverse case and also in the ground case. Insofar as the ground case is concerned, the detaining authority, after taking note of the fact that no bail application was filed by the detenu, relied upon the order passed in Cr.M.P.No.3122/2021 dated 11.03.2021 and came to a conclusion that it is a similar case and there is a likelihood of the detenu coming out on bail. 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.

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*.



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10.The relevant portions are extracted hereunder:

“24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with [Article 22](#) of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.



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27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him--

(a) that there is a real possibility of his being released on bail, and

(b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court.

28. It is neither possible nor advisable catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. That is why there is no provision in the Act in that regard and the matter is left to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.”



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11. It is clear from the above that the detenu is in custody and he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it was based merely on the presumption made by the detaining authority, the same reflects non application of mind on the part of the detaining authority.

12. We have carefully gone through the order passed in Cr.M.P.No. 3122/2021 dated 11.03.2021. The detaining authority has specifically stated in the detention order that no bail application was filed by the detenu in the ground case. However, the detaining authority has taken into consideration the bail order that has been granted in similar case in Cr.M.P.No.3122/2021 dated 11.03.2021 and has come to the conclusion that there is a likelihood of the detenu coming out on bail after a lapse of time. In that case, an affidavit was filed by the defacto complainant to the effect that he was not threatened by the accused and that he had signed in the blank paper given by the police and the same was taken into consideration and bail was granted to the accused therein. In view of the same, the bail order relied upon by the detaining authority cannot be considered to be a similar case. This is a very vague finding which is not supported by any material and the



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same goes against the settled principles of law. Therefore, the order of detention is liable to be interfered with.

13.In the result, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in M.H.S.Confdl.No.47/2022 dated 27.04.2022, is set aside. The detenu, viz., Valathi, aged about 22 years, S/o.Sundram, 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.)
28.10.2022

Index : Yes/No
Internet : Yes
PJJ

To:

1. The Additional Chief Secretary to the Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.



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3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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