

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.10.2022**

CORAM

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

H.C.P.(MD)No.1117 of 2022

Aarthi

... Petitioner / Wife of the Detenu

Vs.

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Tiruchirapalli City,
Tiruchirapalli.

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the impugned detention order passed by the 2nd respondent made in is proceedings in C.No.46/Detention/C.P.O/T.C/2022 dated 11.04.2022 in

detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a “Goonda” and quash the same and direct the respondents to produce the detenu namely Sakthivel, S/o.Balraj, Male, aged about 35 years, who is detained at Central Prison, Tiruchirapalli, before this Court and set him at liberty.

For Petitioner : Mr.S.S.Sundarapandian

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz. Sakthivel, aged about 35 years, S/o.Balraj. The detenu has been detained by the second respondent by his order in C.No.46/Detention/C.P.O/T.C/2022 dated 11.04.2022 holding him to be a "Goonda", as contemplated under 2(f) of the 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, 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.

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

7. Apart from the main ground, that was urged by the learned counsel for the petitioner is that the detaining authority, after noting the fact that no bail application was filed at the time of passing the detention order, took into consideration the order passed in CrI.M.P.No.4529 of 2021, came to a conclusion that bail is granted in similar case and therefore, there is a likelihood of the detenu coming out on bail. The learned counsel submitted that the order that was relied upon by the detaining authority was not a similar case and hence, the detention order suffers from non application of mind.

8.We have carefully gone through the order passed in CrI.M.P.No.4529 of 2021. In that case, bail was granted by taking into consideration the previous case registered under Section 41(A) of the Tamil Nadu Prohibition of Harassment of Women Act, against the accused therein. Whereas in the present case, the previous case registered against the detenu was for an offence of robbery. Hence, the bail order that was taken into

consideration by the detaining authority cannot be considered to be a similar case and 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*.

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.No.46/Detention/C.P.O/T.C/2022 dated 11.04.2022, passed by the second respondent is set aside. The detenu, Sakthivel, aged about 35

years, S/o.Balraj, 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.)
14.10.2022

Index : Yes/No

Internet : Yes

Ns/Ta

To:

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Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
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Tiruchirapalli.

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

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

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