



H.C.P(MD)No.1139 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 18.11.2022

CORAM

**THE HON'BLE MR.JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

H.C.P.(MD)No.1139 of 2022

Jayamani

.. Petitioner /mother of the
detenu

Vs

1. The State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
2. The District Magistrate and District Collector,
Theni District,
Theni.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Inspector of Police,
Odaipatti Police Station,
Theni District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to



H.C.P(MD)No.1139 of 2022

issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order passed by the second Respondent in Detention Order No. 35/2022 dated 23.04.2022 and to quash the same and direct the Respondents to produce the body or person of the detenu by name, Arunpandi, son of Mokkathurai, aged about 26 years, now detained at the Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.S.Mahendrapathy

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

N. ANAND VENKATESH, J.

The petitioner is the mother of the detenu viz., Arunpandi, son of Mokkathurai, aged about 26 years. The detenu has been detained by the second respondent by his order in Detention Order No.35/2022 dated 23.04.2022 holding him to be a “Drug Offender”, as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



WEB COPY

2. 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.

3. 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.

4. 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.

5. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 22.03.2022 and the investigation was completed and final report was filed on 15.09.2022 within time before



the NDPS Court, Madurai. He further submitted that the final report is yet to be taken on file.

6. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority after taking into consideration the remand of the detenu in the ground case, came to a conclusion that there is a possibility of the detenu being let out on bail and this satisfaction was arrived at by the detaining authority without any material. Hence, the detention order suffers from non application of mind.

7. We have carefully considered the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

8. We have carefully gone through the detention order. The detaining authority has merely stated in the detention order that in similar cases, bail is granted by the competent Court, after lapse of time and therefore there is a likelihood of the detenu being granted bail. This conclusion was arrived at by the detaining authority without any material. That apart, this is a case



involving 84 kgs of Ganja which is a commercial quantity. Hence, even when a bail petition is considered in this case, there are stringent conditions provided under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, before bail can be granted. Therefore, the detaining authority has mechanically passed an order as if bail is granted in cases involving commercial quantity in a routine fashion. This clearly reflects the non application of mind on the part of the detaining authority while arriving at the subjective satisfaction with regard to the likelihood of the detenu coming out on bail.

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



H.C.P(MD)No.1139 of 2022

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 Detention Order No.35/2022 dated 23.04.2022 passed by the second respondent is set aside. The detenu, viz., Arunpandi, son of Mokkathurai, 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.]
18.11.2022

Index : Yes/No
Internet : Yes
PJJ

To

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



H.C.P(MD)No.1139 of 2022

Theni.

3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Inspector of Police,
Odaipatti Police Station,
Theni District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P(MD)No.1139 of 2022

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

PJL

H.C.P.(MD)No.1139 of 2022

18.11.2022