



H.C.P.(MD)No.1141 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1141 of 2022

M.Pon Esakki

.. Petitioner

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



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the detention order passed in M.H.S.Confdl.No.53 of 2022, dated 02.05.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's husband i.e., Murugan, son of Muthumalai Thevar, aged about 46 years, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

The petitioner is the wife of the detenu viz., Murugan, son of Muthumalai Thevar, aged about 46 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.53 of 2022, dated 02.05.2022, holding him to be a "Goonda", as contemplated under Section



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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. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the main ground that was canvassed by the learned counsel for the petitioner is that the detaining authority came to a conclusion that there is a likelihood of the detenu coming out on bail by relying upon the order passed in CrI.M.P.No.597 of 2020. The learned counsel for the petitioner submitted that the order relied upon by the detaining authority was not a similar case. Hence, the learned counsel submitted that it is clearly a non-application of mind on the part of the detaining authority.



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4. 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.

5. The learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and the final report was filed and it was taken on file by the II Additional District Court, Tirunelveli in S.C.No.256 of 2022.

6. We have carefully considered the submissions made on either side and also materials available on record.

7. In the present case, the detention order was passed on a solitary incident. The detaining authority while passing the detention order



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was aware of the fact that no bail application was filed by the accused.

However, the detaining authority, came to a conclusion that there is a likelihood of the detenu being let out on bail by relying upon the order passed in Crl.M.P.No.597 of 2020.

8. We have carefully gone through the order passed in Crl.M.P.No.597 of 2020, it is seen that the accused therein was granted bail by considering the long incarceration that was suffered by the accused and also taking into consideration that the substantial portion of the investigation must have been completed. The bail order that was relied upon by the detaining authority cannot be considered to be a similar case. It, therefore, clearly reflects the non-application of mind on the part of the detaining authority to come to the subjective satisfaction.

9. In view of the above, the detention order suffers from non-application of mind on the part of the detaining authority and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.



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2. The District Collector and District Magistrate,
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Tirunelveli.
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Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH,J.

and

N.ANAND VENKATESH, J.

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