



HCP(MD)No.1158 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.1158 of 2022

S.Ettappan

.. Petitioner/father of the
Detenu

Vs

1. State of Tamil Nadu represented by its
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai-600 009.
2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Tthoothukudi Distirct, Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

..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 H.S.(M).Confdl.No. 81/2022 dated 26.04.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name, Muthumariappan, aged 22 years, S/o.Ettappan, now confined 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 father of the detenu viz., Muthumariappan, aged 22 years, S/o.Ettappan. The detenu has been detained by the second respondent by his order in H.S.(M).Confdl.No.81/2022 dated 26.04.2022 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.



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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 main ground that was urged by the learned counsel for the petitioner is that the the detaining authority, after taking note of the fact that the bail petition filed by the detenu is pending before the Special Court,



came to a conclusion that there is a likelihood of the detenu being granted bail, based on the bail order passed in Cr.M.P.No.365/2018 dated 30.01.2018. 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.

6. 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.

7. We have carefully gone through the bail order relied upon by the detaining authority passed in Cr.M.P.No.365/2018 dated 30.01.2018 in which one Seenivasan was granted bail. It is seen that bail was granted to the accused therein only on the ground that nobody sustained any injury and the major part of the investigation has been completed. Whereas in the present case, injury was sustained by the victim and the same is clear from para 3 of the detention order. In view of the same, we find that the



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subjective satisfaction arrived at by the detaining authority with regard to the likelihood of the detenu coming out on bail suffers from non-application of mind on the part of the detaining authority.

8.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*.

9.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.

10.In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M).Confdl.No.81/2022 dated 26.04.2022 passed by the



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second respondent is set aside. The detenu, viz., Muthumariappan, aged 22 years, S/o.Ettappan, 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,
Fort St. George,
Chennai – 9.
2. The District Collector and District Magistrate,
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4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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