



HCP(MD)No.1185 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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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.1185 of 2022

Ayyamperumal

... Petitioner / Guardian of Detenu

/Vs./

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.

3.The Inspector of Police,
Erumbulikurichi Police Station,
Ariyalur District.

4.The Superintendent of Prison,
Central Prison, Trichy.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, to call for the records pertaining to the order



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of detention passed by the second respondent in his proceedings Cr.M.P.No. 04/2022 dated 06.04.2022 and quash the same as illegal and produce the detenu namely Sokku @ Rajesh S/o. Rajendran, aged about 27 years now he is confined in Central Prison, Trichy before this Court and set him at liberty.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the guardian of the detenu viz., Sokku @ Rajesh, S/o.Rajendran aged about 27 years. The detenu has been detained by the second respondent by his order in Detention Order Cr.M.P.No.04/2022, dated 06.04.2022 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. 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 that 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.



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6. Apart from the other grounds, the main ground that was urged by the learned counsel appearing for the petitioner is that the the detaining authority had taken note of the fact that the bail application filed by the detenu was dismissed. However, by relying upon the order passed in Cr.M.P.No.8840 of 2014, the detaining authority had come to the conclusion that bail has been granted in a similar case and there is a likelihood of the detenu being released on bail. The learned counsel for the petitioner submitted that the bail order that was relied upon by the detaining authority does not pertain to a similar case and the detention order suffers from non-application of mind.

7. The learned Additional Public Prosecutor strongly opposed this Habeas Corpus Petition.

8. We have gone through the order passed in Cr.M.P.No.8840 of 2014 and we find that in the said case, the learned Magistrate had granted mandatory bail under Section 167(2) of Cr.P.C., since the charge sheet was not filed within the stipulated time. The said order can never be taken to be



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a similar case and the satisfaction arrived at by the detaining authority clearly suffers from non-application of mind. The impugned detention order is therefore liable to be quashed.

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 Cr.M.P.No.04/2022, dated 06.04.2022, passed by the second



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respondent is set aside. The detenu, viz., Sokku @ Rajesh, S/o.Rajendran, aged about 27 years, 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
ta/Ns

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
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- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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