

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.10.2022**

CORAM

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

H.C.P.(MD)No.1175 of 2022

Gomathi

... Petitioner / Mother 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,
Thanjavur District, Thanjavur.
- 3.The Inspector of Police,
Kumbakonam Taluk Police Station,
Thanjavur 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 of detention passed by the second respondent in his proceedings P.D.No.

34/2022 dated 19.04.2022 and quash the same as illegal and produce the detenu namely Hari @ Moppa Hari @ Muralidharan S/o.Ragumaran, aged about 20 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 mother of the detenu viz., Hari alias Moppa Hari alias Muralidharan, S/o.Raguraman aged about 20 years. The detenu has been detained by the second respondent by his order in Detention Order P.D.No.34/2022 dated 19.04.2022 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* satisfied 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. Apart from the other grounds, the main ground that was urged by the learned counsel appearing for the petitioner is that the detaining authority, after taking note of the fact that the detenu has not filed any bail

petition, took into consideration the order passed in Cr.M.P.No.2304 of 2016 and came to the conclusion that the bail is granted in a similar case and there is a likelihood of the detenu being granted bail.

7. The learned Additional Public Prosecutor strongly opposed this Habeas Corpus Petition by filing his counter.

8. We have carefully gone through the order passed in Cr.M.P.No. 2304 of 2016. In that case, the bail was granted on the ground that no injury was sustained by the complainant therein and there was no objection for grant of bail to the accused therein. It is therefore clear that the bail order passed in Cr.M.P.No.2304 of 2016 cannot be taken to be a similar case and hence, the detention order 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 P.D.No.34/2022, dated 19.04.2022, passed by the second respondent is set aside. The detenu, viz., Hari alias Moppa Hari alias Muralidharan, S/o.Raguraman, aged about 20 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.)**
19.10.2022

Index : Yes/No
Internet : Yes
ta

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

ta

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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