



H.C.P.(MD)No.1174 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1174 of 2022

Thavamani

.. Petitioner

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram District.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. 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 of the second respondent in S.R.No.09/DO/2022, dated 13.04.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name, Thavamani, son of Kumaresan, aged about 24 years, now confining as "Drug Offender" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Prakash

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 detenu viz., Thavamani, son of Kumaresan, aged about 24 years. The detenu has been detained by the second respondent by his order in S.R.No.09/DO/2022, dated 13.04.2022, 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.



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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 appearing for the petitioner would mainly focussed his argument on the ground that the detaining authority inspite of being aware of the fact that the detenu did not filed any bail petition, came to a conclusion that there is a likelihood of the detenu coming out on bail by relying upon an order, dated 16.03.2020, passed in CrI.M.P.No.282 of 2020. The learned counsel further submitted that the order relied upon by the detaining authority is not a similar case. Hence, it is clearly a non-application of mind on the part of the detaining authority.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would submit that



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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 further submitted that the investigation was completed and final report was filed and it was taken on file by the Special Court for NDPS Act Cases, Pudukottai in C.C.No.79 of 2022.

6. On carefully going through the detention order, it is seen that the Detaining Authority has specifically stated that no bail petition has been filed by the detenu on the date of passing the order of detention. However, he has arrived at the subjective satisfaction only on the ground that similarly placed accused person was granted the relief of bail by the Sessions Court.



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7. On carefully going through the bail order passed in CrI.M.P.No.282 of 2020, it is seen that the bail was granted in this case, since the final report was not filed within the mandatory period of 180 days and therefore, the statutory bail was granted under Section 167(2) of Cr.P.C. This order cannot be considered to be a similar case and it, therefore, clearly reflects the non-application of mind on the part of the detaining authority to come to the subjective satisfaction.

8. 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.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in S.R.No.09/DO/2022, dated 13.04.2022 passed by the second respondent is set aside. The detenu, viz., Thavamani, son of



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Kumaresan, aged about 24 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.)

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Index : Yes/No
Internet : Yes
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