



HCP(MD)No.1197 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 30.09.2022

CORAM

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

H.C.P.(MD)No.1197 of 2022

Vijaya

... Petitioner /
wife of the Detenu

Vs.

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
District Collector's Office,
Tenkasi District.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, calling for the entire records connected with
the detention order passed by the 2nd Respondent in M.H.S.Confdl.No.



HCP(MD)No.1197 of 2022

38/2022 dated 30.03.2022 and quash the same and direct the respondents to produce the body or person of the detenu, by name, Sakthivel, male, aged 62 years, son of Karuppaiah Thevar, now confined at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Balamurugan

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the wife of the detenu viz., Sakthivel, aged 62 years, son of Karuppaiah Thevar. The detenu has been detained by the second respondent by his detention order in M.H.S.Confdl.No.38/2022 dated 30.03.2022 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.

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.

WEB COPY

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the following grounds:

(i) there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay, and

(ii) the detaining authority was swayed by the fact that the detenu is attempting to file a bail petition and hence, it is submitted by the learned counsel for the petitioner that the subjective satisfaction that has been arrived at by the detaining authority at Paragraph No.6 of the order is not supported by any materials. Therefore, the same also suffers from non application of mind.

4. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector,**



HCP(MD)No.1197 of 2022

Tiruchirappalli District & another].

WEB COPY

5. 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.

6. The Detention Order in question was passed on 30.03.2022. The petitioner made a representation dated 15.07.2022. The representation was received on 19.07.2022. Thereafter, remarks were submitted on 29.07.2022. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 01.08.2022.

7. It is the contention of the petitioner that there was a delay of 9 days in submitting the remarks by the Detaining Authority, of which 5 days were Government holidays and hence there was an inordinate delay of 4 days in



HCP(MD)No.1197 of 2022

submitting the remarks.

WEB COPY

8. The detaining authority has considered the fact that the detenu is attempting to file a bail petition before the competent Court and that bail was granted in similar case in Cr.M.P.No.5150/2018 on 26.12.2018. Therefore, the detaining authority came to the conclusion that there is an imminent possibility of the detenu coming out on bail. It is seen that bail was granted in Cr.M.P.No.5150/2018, since the accused therein has no previous case and there is no serious objections raised on the side of the prosecution and hence, the similar case that has been relied upon by the detaining authority is not similar to that of the case of the detenu.

9. The satisfaction that has been arrived at by the detaining authority is merely on surmises and it is not based on any materials that has been placed before the detaining authority. At this point of time, it will be relevant to take note of the Full Bench judgment, which has been referred supra.

10. The relevant portions are extracted hereunder:



WEB COPY



HCP(MD)No.1197 of 2022

“24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with [Article 22](#) of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has



reason to believe on the basis of reliable material placed before him--

(a) that there is a real possibility of his being released on bail, and

(b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court.

28. It is neither possible nor advisable catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. That is why there is no provision in the Act in that regard and the matter is left to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.”

11. It is clear from the above that the detenu is in custody and he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it



HCP(MD)No.1197 of 2022

was based merely on the presumption made by the detaining authority, the same reflects non application of mind on the part of the detaining authority.

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

13. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.38/2022 dated 30.03.2022 passed by the second respondent is set aside. The detenu, viz., Sakthivel, aged 62 years, son of Karuppaiah Thevar, 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.)
30.09.2022

Index : Yes/No
Internet : Yes
PJJ

To:

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,



Secretariat,
Chennai-600 009.

WEB COPY



HCP(MD)No.1197 of 2022

2. The District Collector and District Magistrate,
District Collector's Office,
Tenkasi District.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.1197 of 2022

J. NISHA BANU,J.
and
N. ANAND VENKATESH,J.

PJL

H.C.P.(MD)No.1197 of 2022

30.09.2022