



HCP(MD)No.1267 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 05.09.2022

CORAM

The Honourable Mrs. Justice **J.NISHA BANU**
and
The Honourable Mr. Justice **N.ANAND VENKATESH**

H.C.P.(MD)No.1267 of 2022

Rajapandi

.. Petitioner / detenu

Vs.

- 1.The Additional Chief Secretary to Government,
State of Tamilnadu
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Theni District, Theni.
- 3.The Superintendent of Prison
Madurai Central Prison,
Madurai District.

.. Respondents

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 respondent No.2, in Detention Order No.03/2022 dated 12.01.2022 and quash the same and direct the respondents to produce the detenu or body of the detenu by name Rajapandi, son of Balu, aged



HCP(MD)No.1267 of 2022

about 32 years now confined as Sexual Offender at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

J.NISHA BANU, J.

and

N.ANAND VENKATESH, J

The petitioner is the detenu viz., Rajapandi, aged about 32 years, S/o.Balu. The detenu has been detained by the second respondent by his order in Detention Order No.03/2022 dated 12.01.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. Though many grounds have been raised in the 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, there is a possibility of granting bail by the competent Court after a lapse of time.



HCP(MD)No.1267 of 2022

WEB COPY

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 there is a real possibility of granting bail by the competent Court.

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. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents. Counter affidavit has not yet been filed by the respondents.

6. Even though several grounds have been raised in the petition filed before this Court, it will be enough, if this Court focuses on the main ground that has been raised by the learned counsel for the petitioner. The detaining authority has specifically stated in the detention order that the



HCP(MD)No.1267 of 2022

detenu has not filed any bail petition. However, merely based on some secret information, the detaining authority has inferred that there is a possibility of the detenu coming out on bail.

7. 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*.

8. 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.



HCP(MD)No.1267 of 2022

WEB COPY

5. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.03/2022 dated 12.01.2022 passed by the second respondent is set aside. The detenu, viz., Rajapandi S/o.Balu, aged about 32 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.)
05.09.2022

Index : Yes/No

Internet : Yes

RR

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Theni District, Theni.
- 3.The Superintendent of Prison
Madurai Central Prison, Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



HCP(MD)No.1267 of 2022

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

RR

H.C.P.(MD)No.1267 of 2022

05.09.2022