



H.C.P.(MD)No.1278 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1278 of 2022

Panju

.. Petitioner

Vs.

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

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

3.The Inspector of Police,
Devakottai Police Station,
Sivagangai District.

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

.. Respondents



H.C.P.(MD)No.1278 of 2022

WEB COPY

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the impugned detention order passed by the second respondent by his proceedings vide Cr.M.P.No.29/Goonda/2022, dated 22.05.2022 and quash the same and direct the respondents herein to produce the petitioner's son namely, Selvakumar, Male, Hindu, son of Murugan, aged about 26 years, detained as "Goonda" now confined at the Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.R.Venkateswaran

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 mother of the detenu viz., Selvakumar, son of Murugan, aged about 26 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.29/Goonda/2022, dated 22.05.2022, holding him to be a "Goonda", as contemplated under Section



H.C.P.(MD)No.1278 of 2022

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 main ground that was urged by the learned counsel for the petitioner is that the detaining authority was aware of the fact that the bail petition filed in the ground case was pending. However, the detaining authority came to a conclusion that there is a likelihood of the detenu being granted bail by relying upon the order passed in CrI.O.P.(MD)No.1631 of 2021. The learned counsel submitted that the order relied upon by the detaining authority is not a similar case and therefore, the detention order suffers from non-application of mind on the part of the detaining authority.



H.C.P.(MD)No.1278 of 2022

WEB COPY

4. 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.

5. The learned Additional Public Prosecutor, on instructions, submitted that the investigation was completed and the final report was filed and it was taken on file by the learned Judicial Magistrate, Devakottai, in P.R.C.No.14 of 2022.

6. We have carefully considered the submissions made on either side and also materials available on record.

7. The detaining authority was aware of the fact that the bail application filed by the detenu was pending. We have carefully gone



H.C.P.(MD)No.1278 of 2022

WEB COPY

through the order passed in CrI.O.P.(MD)No.1631 of 2021. That was a case where the only overt-act, that was attributed against the accused therein, was that he keeping watch over the place and thereby facilitated the other accused persons to commit murder. This Court also took into consideration the long incarceration suffered by the accused therein and also the fact that the deceased in that case was a history-sheeter. The order relied upon by the detaining authority cannot be considered to be a similar case. 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 Cr.M.P.No.29/Goonda/2022, dated 22.05.2022, passed by the second respondent is set aside. The detenu, viz., Selvakumar, son of



H.C.P.(MD)No.1278 of 2022

WEB COPY

Murugan, aged about 26 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.)

28.11.2022

Index : Yes/No
Internet : Yes
rm



H.C.P.(MD)No.1278 of 2022

Copy to

WEB COPY

- 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,
Sivagangai District.
- 3.The Inspector of Police,
Devakottai Police Station,
Sivagangai District.
- 4.The Superintendent of Central Prison,
Central Prison,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P.(MD)No.1278 of 2022

M.S.RAMESH,J.

and

N.ANAND VENKATESH, J.

rm

H.C.P.(MD)No.1278 of 2022

28.11.2022