



HCP(MD)No.1318 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 18.11.2022**

**CORAM**

**THE HON'BLE MR.JUSTICE M.S.RAMESH  
AND  
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

**H.C.P.(MD)No.1318 of 2022**

Thangamuniyappan

.. Petitioner / brother of the  
detenu

**Vs**

1. The Secretary to Government,  
Co-Operation, Food and Consumer Protection Department,  
Secretariat,  
Chennai-600 009.
2. The District Magistrate and District Collector,  
Office of the District Magistrate and District Collector,  
Dindigul District,  
Dindigul.
3. The Additional Secretary to Government,  
Department of Consumer Affairs,  
Ministry of Consumer Affairs, Food and Public  
Distribution System,  
Government of India,  
Room No.270, Krishi Bhavan,  
New Delhi-110 001.
4. The Superintendent of Prison,  
Madurai Central Prison,

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Madurai District.

.. Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order passed by the second Respondent in D.O.No.65/2022 dated 25.07.2022 and to quash the same and direct the Respondents to produce the body or person of the detenu by name, Pandi, son of Murugan, aged about 38 years, now confined at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

### **ORDER**

**N. ANAND VENKATESH,J.**

The petitioner is the brother of the detenu viz., Pandi, son of Murugan, aged about 38 years. The detenu has been detained by the second respondent by his order in D.O.No.65/2022 dated 25.07.2022 holding him to be a "Black Marketeer", as contemplated under Section 3(1) r/w 3(2)(a) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central 7 of 1980). The said order is



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under challenge in this Habeas Corpus Petition.

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2. Though several grounds have been raised in the Habeas Corpus 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, who are similarly placed, have been granted bail by the competent Court.

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 the accused, who are similarly placed have been granted bail.

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.



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5. 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 third bail petition filed by the detenu is pending and inspite of the same, came to a conclusion that there is likelihood of the detenu coming out on bail by relying upon the order passed in Cr.M.P.No.15319/2021 dated 22.12.2021. According to the learned counsel appearing for the petitioner, the similar case that was taken into consideration by the detaining authority to come to a conclusion that there is a likelihood of the detenu being released on bail, is not a similar case and in the bail order, it is seen that bail was granted by considering the pandemic situation. Hence, the detention order suffers from non application of mind.

7. We have carefully considered the submissions made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

8. We have carefully gone through the order passed in Cr.M.P.No. 15319/2021 dated 22.12.2021 and it is clear that the bail was granted in that case mainly on the ground that there was a pandemic situation prevailing



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and the accused therein had also suffered incarceration for a sufficient period. Hence, this order cannot be considered to be a similar case. In view of the same, we find that the subjective satisfaction arrived at by the detaining authority with regard to the likelihood of the detenu coming out on bail suffers from non-application of mind on the part of the detaining authority.

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.



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**11.** In the result, the Habeas Corpus Petition is allowed and the order of detention in D.O.No.65/2022 dated 25.07.2022 passed by the second respondent is set aside. The detenu, viz., Pandi, son of Murugan, aged about 38 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.]**  
**18.11.2022**

Index : Yes/No  
Internet : Yes  
PJJ

**To:**

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2. The District Magistrate and District Collector,  
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**M.S.RAMESH,J.**

and

**N. ANAND VENKATESH,J.**

PJL

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