



HCP(MD)No.1556 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.12.2022

CORAM

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

H.C.P.(MD)No.1556 of 2022

Selvaraj

... Petitioner /
Detenu

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,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai,
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, calling for the entire records connected with the detention order passed in M.H.S.Confdl.No.70/2022 dated 18.05.2022 on the file of the 2nd Respondent and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Selvaraj, son of Rajan, aged about 40 years now detained at the Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.R.Prakash

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Selvaraj, son of Rajan, aged about 40 years. The detenu has been detained by the second respondent by his order in Detention Order M.H.S.Confdl.No.70/2022 dated 18.05.2022 holding him to be a "Goonda", as contemplated under Section 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. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority after being aware of the fact that no bail petition was filed by the detenu, placed reliance upon the order passed in CrI.M.P.No.1805 of 2018 and came to a conclusion that there is a likelihood of the detenu being granted the bail. The learned counsel for the petitioner submitted that the order relied upon by the detaining authority is not a similar case, since in the present case, the accused persons said to have murdered a witness.

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.

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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 IV Additional District and Sessions Court, Tirunelveli, in S.C.No. 312 of 2022.

6. The detaining authority was aware of the fact that the detenu had not filed any bail application and inspite of the same, came to a conclusion that there is a possibility of the detenu filing a bail petition and bail being granted in his favour. To come to such a conclusion, the detaining authority took note of the order passed in CrI.M.P.No.1805 of 2018. We have carefully considered the order and it is seen that the bail was granted in that case to the accused persons therein on the ground that there were no previous antecedents against the accused and the material part of the investigation was completed and the accused persons had already suffered incarceration for a sufficient period. The bail order that was relied upon by the detaining authority cannot be considered to be a similar case and it, therefore, clearly reflects the non-application of mind on the part of the



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detaining authority to come to the subjective satisfaction.

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7. 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.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.70/2022 dated 18.05.2022 passed by the second respondent is set aside. The detenu, viz., Selvaraj, son of Rajan, aged about 40 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.)
01.12.2022

Index : Yes/No
Internet : Yes
PJJ



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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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and

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