



H.C.P(MD)No.1658 of 2022

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

WEB COPY

**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.1658 of 2022**

Panchavarnam

.. Petitioner / mother 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,  
Tiruchirappalli District,  
Tiruchirappalli.
3. The Superintendent of Prison,  
Central Prison,  
Tiruchirappalli.

.. 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 Cr.M.P.No.6/2022 dated 27.01.2022 and to quash the same and direct the Respondents to



H.C.P(MD)No.1658 of 2022

produce the body or person of the detenu by name, Murugan, son of Chinnakkalai, aged about 35 years, detained as “Sexual Offender” under Section 2(ggg) of the Tamil Nadu Act 14 of 1982, now confined at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.A.Joseph Jerry

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

### **ORDER**

**N. ANAND VENKATESH, J.**

The petitioner is the mother of the detenu viz., Murugan, son of Chinnakkalai, aged about 35 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.6/2022 dated 27.01.2022 holding her 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 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



H.C.P(MD)No.1658 of 2022

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.

5. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was arrested on 24.12.2021 and the investigation was completed and final report was filed on 16.02.2022 before the Mahila Court, Trichy. The same has been taken on file in Spl.S.C.No.49/2022. It was further submitted that the case is now at the stage of examination of witnesses.



6. 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, relied upon the order passed in Cr.M.P.No.76/2018 dated 15.02.2018 and came to a conclusion that there is a likelihood of the detenu coming out on bail. 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 medical condition of the accused therein. 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 detention order as well as the bail order passed in Cr.M.P.No.76/2018 dated 15.02.2018. The detaining authority was aware of the fact that the detenu had not filed any bail petition



as on date when the detention order was passed. However, the detaining authority took into consideration the order passed in Cr.M.P.No.76/2018 dated 15.02.2018, to come to a conclusion that there is a real possibility of the detenu coming out on bail. On carefully going through the order passed in Cr.M.P.No.76/2018 dated 15.02.2018, it is seen that the bail was granted to the accused therein on medical grounds. This clearly shows that the facts of the present case 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



H.C.P(MD)No.1658 of 2022

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.

**11.** In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.6/2022 dated 27.01.2022 passed by the second respondent is set aside. The detenu, viz., Murugan, son of Chinnakkalai, aged about 35 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  
PJL

To

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



H.C.P(MD)No.1658 of 2022

Chennai-600 009.

2. The District Collector and District Magistrate,  
Tiruchirappalli District,  
Tiruchirappalli.
3. The Superintendent of Prison,  
Central Prison,  
Tiruchirappalli.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



H.C.P(MD)No.1658 of 2022

**M.S.RAMESH,J.**

and

**N. ANAND VENKATESH,J.**

PJL

**H.C.P.(MD)No.1658 of 2022**

**18.11.2022**