



H.C.P(MD)No.1628 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.1628 of 2022

Benjamin Franklin

.. Petitioner / Detenu

Vs

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai-600 009.
2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District,
Dindigul.
3. The Superintendent of Prison,
Central Prison,
Madurai.

.. 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 made in Detention Order No.36/2022 dated 22.04.2022 by



H.C.P(MD)No.1628 of 2022

the District Collector and District Magistrate, Dindigul District, Dindigul, the second Respondent herein branding the detenu as “Drug Offender” and to quash the same and direct the Respondents to produce the body or person of the detenu by name, Benjamin Franklin, son of Arulraj, aged about 43 years, now confined at Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

N. ANAND VENKATESH,J.

The petitioner is the detenu, viz, Benjamin Franklin, son of Arulraj, aged about 43 years. The detenu has been detained by the second respondent by his order in Detention Order No.36/2022 dated 22.04.2022 holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



H.C.P(MD)No.1628 of 2022

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.

5. The learned Additional Public Prosecutor, on instructions, submitted that the detenu was remanded to judicial custody on 06.01.2022 and the final report came to be filed on 21.04.2022 before the NDPS Court,



H.C.P(MD)No.1628 of 2022

Madurai and the same has been taken on file in C.C.No.418/2022. It was further submitted that the case is now posted for hearing on 23.12.2022.

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 the bail petition filed by the detenu was dismissed, came to a conclusion that there is a likelihood of the detenu coming out on bail by relying upon the order passed in Cr.M.P.No.13789/2013 dated 18.09.2013. The learned counsel appearing for the petitioner submitted that the detaining authority proceeded on the ground that the order was passed by the Principal Special Judge for Essential Commodities Act and Narcotic Drugs Psychotropic Substances Act Cases, Madurai and whereas the order that was placed in the booklet pertains to an order passed by the High Court. The learned counsel for the petitioner further submitted that above said order is completely illegible and the order that is relied upon by the detaining authority is not even matching the one that is found in the booklet. Hence, the detention order suffers from non application of mind.



H.C.P(MD)No.1628 of 2022

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. The detaining authority was aware of the fact that the case involves commercial quantity and the bail petition filed by the detenu was dismissed. However, the detaining authority came to a conclusion that there is likelihood of the detenu coming out on bail by relying upon a bail order passed in Cr.M.P.No.13789/2013 dated 18.09.2013. The bail order that is relied upon by the detaining authority is stated to be passed by the Special Court for NDPS cases, Madurai and whereas what is found in the booklet is the order passed by this Court. That apart, the bail order is completely illegible. 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 by this Court.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.36/2022 dated 22.04.2022 passed by the second respondent is set aside. The detenu, viz., Benjamin Franklin, son



H.C.P(MD)No.1628 of 2022

of Arulraj, aged about 43 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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Dindigul.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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H.C.P(MD)No.1628 of 2022



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H.C.P.(MD)No.1628 of 2022

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