



H.C.P.(MD)No.1681 of 2022

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.1681 of 2022

Nasima

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by The Secretary to Government of Tamil Nadu
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector cum District Magistrate,
Office of the District Collector cum District Magistrate,
Theni District,
Theni.
- 3.The Government of India,
Additional Government Secretary of Consumer Affairs,
Food and Public Distribution Department of Food and PD
No.270, Krishi Bhawan,
New Delhi – 110 001.



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4.The Superintendent,
Central Prison,
Madurai.

5.The Inspector of Police,
CSCID,
Uthamapalayam,
Theni District.

.. Respondents

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 detention order of the respondent No.2 in Detention Order No.01/2022 (CS), dated 30.08.2022 and to quash the same and direct the respondents to produce the body or person of the detenu, Sathik Ali, son of Zahir Hussain, aged about 24 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.M.Karuppasamy pandian

For Respondents : Mr.A.Thiruvadi Kumar - RR1, 2, 4 & 5
Additional Public Prosecutor
Mr.K.Kuttalanathan - R3



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ORDER

[Order of the Court was made by **N.ANAND VENKATESH, J.**]

The petitioner is the mother of the detenu viz., Sathik Ali, son of Zahir Hussain, aged about 24 years. The detenu has been detained by the second respondent by his order in Detention Order No.01/2022 (CS), dated 30.08.2022 holding him to be a "Black Marketeer", as contemplated under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act 7 of 1980). 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 many grounds have been raised in the petition, the learned counsel for the petitioner focused his argument on the ground that



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detaining authority was aware of the fact that the bail petition in Cr.M.P. No.4992 of 2022 filed by the detenu was pending before the Court. However, the detaining authority, came to a conclusion that there is a likelihood of the detenu being let out on bail and for arriving at such a conclusion, there is absolutely no material available and it has been merely mentioned that there is likelihood of the detenu being released on bail. This finding suffers from non-application of mind on the part of the detaining authority.

4. 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 there is a real possibility of granting bail by the competent Court.

5. 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



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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.

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

7. Though the detaining authority was aware of the fact that the bail petition filed by the detenu was pending before the Court, however, the detaining authority, came to a conclusion that there is a likelihood of the detenu being let out on bail and for arriving at such a conclusion, there is absolutely no material available and it has been merely mentioned that there is likelihood of the detenu being released on bail and it, therefore, clearly reflects the non-application of mind on the part of the detaining authority to come to the subjective satisfaction.



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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 Detention Order No.01/2022 (CS), dated 30.08.2022 passed by the second respondent is set aside. The detenu, viz., Sathik Ali, son of Zahir Hussain, aged about 24 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.)

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Index : Yes/No
Internet : Yes
rm



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