



HCP(MD)No.1716 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.10.2022

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THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

H.C.P.(MD)No.1716 of 2022

Kannan

... Petitioner / Detenu

/Vs./

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
 - 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Pudukottai District.
 - 3.The Superintendent of Police,
Trichy Central Prison,
Trichy District.
- ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the second respondent in P.D.O.No.05/2022, dated 18.02.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Kannan son of Kathirvelu aged about 42 years, now detained in Trichy Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the detenu viz., Kannan S/o. Kathirvelu, aged about 42 years. The detenu has been detained by the second respondent by his order in P.D.No.05/2022, dated 18.02.2022 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. Apart from the other grounds, the main ground that was urged by the learned counsel for the petitioner is that the detaining authority has only taken into consideration the ground case in Crime No.1295 of 2021 and has



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come to the conclusion that the detenu will be granted statutory bail under Section 167(2) of Cr.P.C.. The learned counsel for the petitioner submitted that the detenu is under remand in the 10th and 15th adverse cases and no bail was granted in those cases. Hence, even if the detenu is let out on bail in the ground case, there is no likelihood of the detenu coming out of the jail, since he is under remand in other two cases. The learned counsel submitted that this was not even considered by the detaining authority. Hence, the detention order suffers from non-application of mind. To substantiate his submission, the learned counsel relied upon the judgment of this Court in *Suneka Vs. State of Tamil Nadu rep by its Secretary and another [(2007) 1 MLJ (Crl) 257]*.

4. The learned Additional Public Prosecutor strongly opposed this Habeas Corpus Petition.

5. There were totally 17 adverse cases against the detenu and one ground case. The detenu is under remand in the 10th and 15th cases and also in the ground case. The detaining authority has taken into consideration only the ground case in Crime No.1295 of 2021 and has come



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to the conclusion that the detenu will be let out on mandatory bail under Section 167(2) of Cr.P.C.. The detaining authority has not even taken into consideration the fact that the detenu is under remand under 10th and 15th adverse cases. Hence, even if the detenu is let out on bail in the ground case, there is no likelihood of the detenu coming out of jail, since his remand continues in the 10th and 15th adverse cases.

6. As rightly contended by the learned counsel for the petitioner, the present case is squarely covered by the judgment cited by the learned counsel for the petitioner and the relevant portion in the said judgment is extracted hereunder:

“6.Non application of mind is on account of the fact that the detenu has been remanded in connection with two cases, but the detaining authority has referred to the possibility of the detenu being released on bail by referring to the bail Applications CrI.M.P.Nos.4007 and 4050 of 2006, which had been filed in Cr.No.44 of 2006. In other words, the detaining authority has not at all considered the possibility of the detenu being released in other case. Even if bail order would have been passed in Cr.No.44 of 2006, the detenu would be still detained in prison as no bail application had been filed in connection with the earlier case, i.e., Cr.No.37 of 2006. The detaining authority has not at all applied his mind to the aforesaid aspect. As a matter of fact, almost on similar circumstances, the Division Bench in Balasubramanian @ Subramanian @ Subbudu @ Subbu v. Commissioner of Police, Madurai City



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(Supra) had quashed such detention on account of the fact that the detaining authority had only referred to filing of bail application in one crime and there is no reference to filing of bail application in connection with other similar crime.”

7. In view of the above, the order of detention is liable to be interfered with.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.05/2022, dated 18.02.2022, passed by the second respondent is set aside. The detenu, viz., Kannan, S/o.Kathirvelu, aged about 42 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
28.10.2022

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