



H.C.P(MD)No.1756 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.1756 of 2022

Navaladiyan

.. 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 Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
3. The Superintendent of Prison,
Tiruchirappalli 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 C.No.



H.C.P(MD)No.1756 of 2022

31/Detention/C.P.O/T.C/2022 dated 08.03.2022 and to quash the same and direct the Respondents to produce the body or person of the detenu by name, Navaladiyan, son of Muniyandi, aged about 46 years, now detained at the Central Prison, Tiruchirppalli, before this Court and set him at liberty.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

N. ANAND VENKATESH, J.

The petitioner is the detenu viz., Navaladiyan, son of Muniyandi, aged about 46 years. The detenu has been detained by the second respondent by his order in C.No.31/Detention/C.P.O/T.C/2022 dated 08.03.2022 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.

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 main ground that was urged by the learned counsel for the petitioner is that the detaining authority inspite of taking into consideration the fact that the bail petition filed by the detenu was dismissed, had taken into consideration the bail that was granted in Cr.M.P.No.1192/2021 dated 06.08.2021 to the detenu in the adverse case 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. 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. The order that was relied upon by the detaining authority pertained to the bail granted to the detenu in the adverse case and the bail was granted on the ground that there was no previous case against the detenu and there was no serious objection on the part of the prosecution in granting bail and the detenu had already suffered incarceration for more than 22 days whereas in the present case, there was one previous case and hence, the order that was relied upon by the detaining authority cannot be considered to be a similar case. Hence, 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.

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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 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 C.No.31/Detention/C.P.O/T.C/2022 dated 08.03.2022 passed by the second respondent is set aside. The detenu, viz., Navaladiyan, son of Muniyandi, aged about 46 years, is directed to be released forthwith unless



H.C.P(MD)No.1756 of 2022

his detention is required in connection with any other case.

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[M.S.R.,J.] & [N.A.V.,J.]
18.11.2022

Index : Yes/No
Internet : Yes
PJL

To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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H.C.P(MD)No.1756 of 2022

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H.C.P.(MD)No.1756 of 2022

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