



HCP(MD)No.1806 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.12.2022

CORAM

**THE HON'BLE MR JUSTICE M.S. RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.1806 of 2022

Lourd Mary

... Petitioner /
Mother of the Detenu

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Magistrate and District Collector,
Virudhunagar,
Virudhunagar District.

3.The Superintendent of Prison,
Central Prison,
Madurai.

4.The Deputy Superintendent of Police,
CBCID-SID,
Madurai.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in Cr.M.P.No.11/2022 dated 14.04.2022 on the file of the 2nd Respondent and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Praveen, son of Selvaraj, aged about 22 years now detained at the Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Praveen, son of Selvaraj, aged about 22 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.11/2022 dated 14.04.2022 holding him 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. 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 several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that the detaining authority after taking note of the fact that no bail petition was filed by the detenu, came to a conclusion that there is a likelihood of the detenu being let out on bail. Hence, according to the learned counsel for the petitioner the subjective satisfaction that has been arrived at by the detaining authority is not supported by any materials. Therefore, the same also suffers from non application of mind.

4. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector, Tiruchirappalli District & another]**.



5. 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. .

6.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*.

7.The relevant portions are extracted hereunder:

“24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.



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25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with [Article 22](#) of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him--

(a) that there is a real possibility of his being released on bail, and

(b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if



bail is granted notwithstanding such opposition to question it before a higher Court.

28. It is neither possible nor advisable catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. That is why there is no provision in the Act in that regard and the matter is left to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.”

8. It is clear from the above that the detenu is in custody and he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it was based merely on the presumption made by the detaining authority, the same reflects non application of mind on the part of the detaining authority. Therefore, the order of detention is liable to be interfered with.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.11/2022 dated 14.04.2022, passed by the second



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respondent is set aside. The detenu, viz., Praveen, son of Selvaraj, aged about 22 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.)
01.12.2022

Index : Yes/No
Internet : Yes
PJJ

To

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- 2.The District Magistrate and District Collector,
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4. The Deputy Superintendent of Police,
CBCID-SID,
Madurai.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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