



H.C.P(MD)No.372 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2023

CORAM :

THE HONOURABLE MR JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

H.C.P(MD)No.372 of 2023

Ganesan @ Ganesh

.. Petitioner

vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The District Collector and District Magistrate,
District Collector and District Magistrate's Office,
Thanjavur District.

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the entire records connected with the detention order of the second respondent in P.D.No.152/2022 dated 04.11.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Ganesan @ Ganesh, S/o.Saravanan,



aged about 20 years, now detained as 'Goonda' at Trichy Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.S.RAMESH, J.]

The petitioner is the detenu viz., Ganesan @ Ganesh, S/o.Saravanan, aged about 20 years. The detenu has been detained by the second respondent by order in P.D.No.152/2022 dated 04.11.2022 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. Though many grounds have been raised in the petition, the learned counsel for the petitioner focussed his arguments on the ground that the



detaining authority was swayed by the fact that the mother of the detenu is attempting to file a bail petition and therefore, he submitted that the subjective satisfaction arrived at by the detaining authority at Paragraph No. 5 of the order is not supported by any materials.

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

5. The learned Additional Public Prosecutor would submit that on completion of investigation, charge sheet has been filed in P.R.C.No.2 of 2023 and is pending before the learned Judicial Magistrate No.I, Kumbakonam.

6. The detaining authority has considered the fact that the mother of the detenu is attempting to file a bail petition before the competent Court and came to the conclusion that there is an imminent possibility of the



detenu coming out on bail. The satisfaction that has been arrived at by the detaining authority is merely on surmises and it is not based on any materials that has been placed before the detaining authority.

7. At this point of time, it will be relevant to take note of the Full Bench judgment, which has been referred *supra*. 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.

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



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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 evident from the above Judgment that, when there are no materials to show that detenu's mother is taking steps to file bail application and it was merely a presumption of the detaining authority that the detenu's mother might file a bail petition, the same reflects non-application of mind on the part of the detaining authority. In view of the same, the detention order is liable to be interfered with.



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9. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.152/2022 dated 04.11.2022 passed by the second respondent is set aside. The detenu, viz., Ganesan @ Ganesh, S/o.Saravanan, aged about 20 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R., J.) (M.N.K., J.)
19.07.2023

NCC : Yes/No
Index : Yes/No
Speaking/Non-speaking order

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To

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Home, Prohibition and Excise Department,
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- 2.The District Collector and District Magistrate,
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Thanjavur District.
- 3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary,
Public (Law and Order) Department,
Fort St. George, Chennai.



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

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