



HCP(MD)No.1441 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.07.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.1441 of 2022

Nagalingam alias Rajalingam

.. Petitioner /detenu

Vs.

1.State of Tamil Nadu

Represented by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

.. Respondents

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

Page 1 of 7



HCP(MD)No.1441 of 2022

the detention order passed in M.H.S.Confdl.No.119/2022 dated 18.07.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Nagalingam alias Rajalingam, aged about 22 years, S/o.Asokan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

The petitioner is the detenu viz., Nagalingam alias Rajalingam, aged about 22 years, S/o.Asokan. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.119/2022 dated 18.07.2022 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.



HCP(MD)No.1441 of 2022

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 being aware of the fact that there was no bail application filed by the detenu came to the conclusion that there is a real possibility of the detenu coming out on bail by relying upon the order passed in Cr.M.P.No.1358/2018. The learned counsel therefore submitted that the order that was relied upon by the detaining authority was not similar and the offence involved is under Sections 450, 376, 506(ii) IPC r/w Section 4 of POCSO Act, 2012 and on that score, the detention order is liable to be interfered with.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. It is further submitted that



HCP(MD)No.1441 of 2022

investigation has been completed in this case and final report has been filed and the same is pending trial before the Mahila Court, Tirunelveli, in S.C No.573/2022.

5. On carefully going through the detention order, the detaining authority was aware of the fact that no bail application was filed by the detenu. However, the detaining authority took into consideration the order passed in Cr.M.P.No.1358/2018 and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that the learned Public Prosecutor has not raised any serious objection and that the offence involved is under POCSO Act. However, in the present case, the FIR was registered for offences under Sections 294(b), 506(i), 376(D) IPC and 67 of Information Technology Act, 2000 and hence, the bail order that was relied upon by the detaining authority cannot be considered to be a similar one.



HCP(MD)No.1441 of 2022

6. In view of the above, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.119/2022 dated 18.07.2022 passed by the second respondent is set aside. The detenu, viz., Nagalingam alias Rajalingam S/o.Asokan, 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.) (M.N.K.,J.)
03.07.2023

NCC : Yes / No
Index : Yes / No
Lm/RR



HCP(MD)No.1441 of 2022

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2. The District Collector and District Magistrate,
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Tirunelveli.
3. The Superintendent of Prison,
Central Prison,
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Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD)No.1441 of 2022

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

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H.C.P.(MD)No.1441 of 2022

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