



HCP(MD)No.1007 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 22.08.2023

CORAM

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

H.C.P.(MD)No.1007 of 2023

Sathishkumar @ Thakkali Sathish

.. 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,
Office of the Commissioner of Police,
Madurai City,
Madurai.

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

.. 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 the detention order of the Respondent No.2 in No.10/BCDFGISSSV/2023



HCP(MD)No.1007 of 2023

dated 22.02.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Sathishkumar @ Thakkali Sathish, son of Babu @ Thakkali Babu, aged about 22 years, now detained as "Goonda" at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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., Sathishkumar @ Thakkali Sathish, aged about 22 years, S/o.Babu @ Thakkali Babu. The detenu has been detained by the second respondent by his order in No.10/BCDFGISSSV/2023 dated 22.02.2023 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.



HCP(MD)No.1007 of 2023

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 mainly contended that the detaining authority was swayed by the fact that the relatives of the detenu are taking efforts to take him out on bail by filing bail application and hence, it is submitted by the learned counsel for the petitioner that the subjective satisfaction that has been arrived at by the detaining authority at Paragraph No.5 of the order 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]**.



HCP(MD)No.1007 of 2023

5. The learned Additional Public Prosecutor has not filed his counter.

However, he strongly opposed the Habeas Corpus Petition.

6. The detaining authority has considered the fact that the relatives of the detenu are attempting to file a bail petition before the competent Court. Therefore, the detaining authority came to the conclusion that there is an imminent possibility of the detenu coming out on bail.

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

8. 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 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.”

9. 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.



HCP(MD)No.1007 of 2023

WEB COPY

10. 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.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.10/BCDFGISSSV/2023 dated 22.02.2023 passed by the second respondent is set aside. The detenu, viz., Sathishkumar @ Thakkali Sathish, S/o.Babu @ Thakkali Babu, 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.)
22.08.2023

NCC : Yes / No
Index : Yes / No
Lm



HCP(MD)No.1007 of 2023

To

WEB COPY

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,
Office of the Commissioner of Police,
Madurai City,
Madurai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.1007 of 2023

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

Lm

H.C.P.(MD)No.1007 of 2023

22.08.2023