



H.C.P(MD)No.2081 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2023

CORAM :

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

H.C.P(MD)No.2081 of 2022

P.Muruugan

.. Petitioner

vs.

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

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

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

4.The Inspector of Police,
Cyber Crime Police Station,
Theni 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 No.105/2022 (Cyber Law Offender) dated 29.11.2022 on the file of the respondent No.2 and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely



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Dinesh, S/o.Murugan, aged about 30 years, now confined at Central Prison, Madurai before this Court and set him at liberty forthwith.

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

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 father of the detenu viz., Dinesh, S/o.Murugan, aged about 30 years. The detenu has been detained by the second respondent by order in No.105/2022 dated 29.11.2022 holding him to be a 'Cyber Law Offender', as contemplated under Section 2(bb) 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 a bail petition may be filed before the competent Court by the detenu or his relatives in future. He further 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 strongly opposed the Habeas Corpus Petition by filing his counter.

6. Even though several grounds have been raised in the petition, this Court is inclined to consider the main ground that has been focussed by the learned counsel for the petitioner.



7. While passing the impugned detention order, the detaining authority had stated that the detenu is remanded in District Jail, Theni in connection with Crime No.55/2022 and his remand period was extended upto 09.12.2022. It is further stated therein that the bail applications filed by the detenu were dismissed on 18.11.2022 and 24.11.2022, however, they have received a secret information that the detenu or his relatives might file a bail application before the competent Court very soon. Though the source of secret information may not be disclosed to the petitioner, the information as such ought to have been disclosed to the petitioner. The non-supply of such a vital information may not be justifiable and hence, the subjective satisfaction arrived at by the detaining authority becomes questionable.

8. 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



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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



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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 evident from the above Judgment that when the detenu is in custody and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives and it was merely a presumption made by the detaining authority that the detenue or his relatives 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.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.105/2022 dated 29.11.2022, passed by the second respondent is set aside. The detenu, viz., Dinesh, S/o.Murugan, aged about 30 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.)

21.07.2023

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

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To

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Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Theni, Theni District.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Inspector of Police,
Cyber Crime Police Station,
Theni District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Joint Secretary,
Public (Law and Order) Department,
Fort St.George, Chennai.



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and
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