



HCP(MD)No.285 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :08.12.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

and

THE HONOURABLE MS.JUSTICE R.POORNIMA

HABEAS CORPUS PETITION(MD)No.285 of 2025

Selvarani

... Petitioner

vs.

1. The State of Tamil Nadu

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

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

3. The Superintendent of Prison
Central Prison, Palayamkottai,
Tirunelveli 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 from the second respondent in M.H.S. Confdl No. 02 of 2025 dated 18.01.2025 by setting aside the order passed by the second respondent and setting the detene Muthusamy, S/o.Ramasamy aged about 45 years at liberty now detained in Central Prison, Palayamkottai.



HCP(MD)No.285 of 2025

WEB COPY

For Petitioner : Mr. K.Jeyamohan

For Respondents: Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **G.K.ILANTHIRAIYAN, J.**]

This Habeus Corpus Petition has been filed to quash the detention order passed by the second respondent in M.H.S. Confdl No. 02 of 2025 dated 18.01.2025 and direct the respondents to produce the detenu or body of the detenu namely the Muthusamy, S/o.Ramasamy aged about 45 years who is now detained in Central Prison, Palayamkottai and set him at liberty forthwith.

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.



HCP(MD)No.285 of 2025

3. The learned counsel appearing for the petitioner would submit that the detenu has been detained by showing only case as ground case.

The detenue was arrested and remanded to judicial custody in pursuance to the registration of the case in Crime No. 35 of 2024 for the offences under Sections 6 r/w.5(l), 5(n), 5(k) of POCSO Act and Section 351(2) of BNS on the file of the Inspector of Police, All Women Police Station, Sankarankovil. However, the petitioner so far did not file any application for bail. The detaining authority without application of mind showing the ground case detained the detenu. For similar case bail was also granted. Therefore, there is a real possibility of the detenue coming out of bail in Crime No.35 of 2024. However, the sponsoring authority by recording the statement of the wife of the detenue, that too without even mentioning the date in the statement, sponsored the name of the detenu for detention. It can not at all be relied upon by the detaining authority and stated that there is a real possibility of the detenu coming out on bail. He also relied on the judgment passed by this Court dated 25.09.2059 in HCP.No.1140 of 2025 in the case of *Varalakshmi .vs. The Additional Chief Secretary to Government and others* .



HCP(MD)No.285 of 2025

4. The learned Additional Public Prosecutor filed counter. From the counter it is revealed that the detenu was involved in POCSO Act registered for the offences under Sections 6 r/w.5(l), 5(n), 5(k) of POCSO Act. The detenu had committed very serious offence as against the mentally retarded victim who is also a deaf and dumb. Now, the victim has been examined by the trial Court through interpreter. However, so far the detenu did not cross examine the victim. This Court already in HCP(MD) No.1389 of 2022 dated 11.04.2023 in the case of ***Susamma Baby .vs. The Principal Secretary to Government, Home, Prohibition and Excise Department and others*** has held as follows:

16. No bail petition pending:

The detaining authority arrived the conclusion on the premise that the detenue has a chance to file the bail application and in all possibility, he would come out on bail in near future by filing bail petition. The preventive detention jurisdiction is suspicion jurisdiction and the authority is only required to act on suspicion and reasonability. In this case, the detaining authority passed the impugned detention order on the notion that the detenue would file bail petition in near future and likely to come out on bail. If he comes out on bail, he would act prejudicial to the public order. The similar contention was raised earlier before this Court in H.C.P(MD)No.15 of 2013 and this Court accepted the said plea and the



WEB COPY



HCP(MD)No.285 of 2025

same was reversed by the Hon'ble Supreme Court in the case of State of Tamilnadu and another v. Nabila and another, reported in (2015) 12 SCC 127 and the Hon'ble Supreme Court held that the satisfaction of the detaining authority that the detenu would come out on bail on filing the bail petition in future, without pendency of the bail petition is within the four corners of the Act. The relevant paragraph is as follows:

"Merely because no bail application was then pending is no premise to hold that there was no likelihood of his being released on bail. The word likely to be released' connote chances of being bailed out, in case there be pending bail application or in case if it is moved in future is decided. The word 'likely' shows it can be either way."

17. Similarly, in the case of Senthamilselvi vs. State of Tamil Nadu and Ors. reported in (2006)5 SCC 676, the Hon'ble Supreme Court has held as under:

"10. It was also submitted that since the detenu had not filed any bail application, the detaining authority could not have inferred that there was possibility of his being released on bail. Strong reliance is placed on several decisions of this Court. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority



HCP(MD)No.285 of 2025

should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be Ipse Dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. Appellant has not disputed correctness of this statement [emphasis supplied]"

18. The above interpretation is only to achieve the purpose of the preventive detention Act and the said jurisdiction is suspicion jurisdiction and hence the detaining authority acted on the ground reality on the materials produced before him that the detenues would file the bail application in future. In this aspect, it is relevant to rely the judgment passed in Hare Ram Pandey vs. State of Bihar and Ors. reported in 2004 (3) SCC 289, by the Hon'ble Supreme Court to emphasis the object of the preventive detention law:

"6. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are



WEB COPY



HCP(MD)No.285 of 2025

to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive, but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the concerned law. The action of Executive in detaining a person being only precautionary the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority therefore, is a purely subjective affair. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty would lose all their meanings are the true justification for the laws of preventive detention. The pressures of the day in regard to the



HCP(MD)No.285 of 2025

imperatives of the security of the State and of public order might require the sacrifice of the personal liberty of individuals. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of a possible future manifestations of similar propensities on the part of the offender. This jurisdiction has been called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment of individual liberty. "To, lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs". This, no doubt, is the theoretical jurisdiction for the law enabling prevention detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be Justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other" .



HCP(MD)No.285 of 2025

WEB COPY

4. Though the detenu so far did not file any application for bail there is a real possibility that the detenu would come on bail on filing bail application in future. Further in similar case no bail application was pending. The word 'likely to be released' connote chances of being bailed out, in case there be pending bail application or in case if it is moved in future is decided. The word 'likely' shows it can be either way. In so far as the statement recorded from the wife of the detenue namely the petitioner herein clearly shows that she is preparing for filing bail application for her husband. Though the statements does not contain date the statement cannot be discarded since the statement was not recorded under Section 161(3) of Cr.P.C., hence the judgment cited by the learned counsel appearing for the petitioner is not applicable to the present case on hand.

5. In view of the same the petitioner has not made out any ground to interfere with the order of detention passed by the second respondent, hence, the petition is liable to be dismissed.



HCP(MD)No.285 of 2025

WEB COPY 6. Accordingly, the Habeus Corpus Petition stands dismissed.

[G.K.I., J.] [R.P., J.]
08.12.2025

Index : Yes / No
Neutral Citation : Yes / No
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To:

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The State of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat
Chennai- 600 009.
2. The District Collector and District Magistrate,
Tenkasi District, Tenkasi
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Central Prison, Palayamkottai,
Tirunelveli District
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.285 of 2025

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HCP(MD)No.285 of 2025

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