



H.C.P(MD)No.718 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

H.C.P(MD)No.718 of 2025

Mirthunaj Kumar

... Petitioner

VS.

1.The State of Tamil Nadu,
Represented by its,
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

3.The Superintendent,
Central Prison,
Madurai.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Habeas Corpus, calling for the entire records in detention order passed by the second respondents made in detention order No.52/2024 dated 04.09.2024 in detaining the detenue under Section 2(bb) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the body or person of the petitioner's brother namely Rohit Kumar, son of Umesh Prasad Singh, aged about 27 years, who is detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.G.Karuppasamy Pandian
for Ms.C.Vijayalakshmi

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

ORDER

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

An issue of importance regarding the maintainability of a Habeas Corpus Petition has been raised in the present Petition, in view of the fact that the first Habeas Corpus Petition filed by the very same petitioner/Mirtunaj Kumar, in HCP(MD)No.1399 of 2024, was dismissed by the Division Bench of this Court by order dated 29.04.2025.

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2.The petitioner has not preferred any Special Leave Petition before the Hon'ble Supreme Court of India, instead chosen to prefer a second Habeas Corpus Petition in HCP(MD)No.718 of 2025 challenging the very same detention order dated 04.09.2024, which was under challenge in H.C.P(MD)No.1399 of 2024.

3.Mr.G.Karuppasamy Pandian, learned counsel appearing for the petitioner, contended that the second Habeas Corpus Petition is maintainable since the detention order infringes the personal liberty of the detainee, which is a fundamental right.

4.In support of the said contention, he relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Lallubhai Jogibhai Patel Vs. Union of India and others [1981 SCC (Crl) 463]***. In paragraphs 13 and 14, the Apex Court made the following observations:

“13.The position that emerges from a survey of the above decisions is that the application of the doctrine of



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constructive res judicata is confined to civil actions and civil proceedings. This principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under [Article 32](#) of the Constitution on fresh grounds, which were not taken in the earlier petition for the same relief.

14.In the present petition fresh additional grounds have been taken, to challenge the legality of the continued detention of the detenu. We would therefore hold that the subsequent writ petition is not barred as res judicata and over-rule the preliminary objection raised by the respondents.

5.The Division Bench of this Court in the case of ***Revathi Vs. Government of Tamil Nadu and others*** [2024 (2) LW (Crl) 610], entertained the second Habeas Corpus Petition and granted relief. Thus, it is contended that the principles laid down in the above two judgments are to be considered in the present case.

6.Rebutting the contentions of the petitioner, Mr.T.Senthil Kumar, learned Additional Public Prosecutor, submitted that the Division Bench of this Court in the case of ***Boominathan Vs. the State of Tamil***



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WEB COPY **Nadu and others [H.C.P(MD)SR.No.10405 of 2023, dated 13.06.2023],**

ruled that a second Habeas Corpus Petition challenging the same detention order is not maintainable. The Division Bench of this Court by order dated 13.06.2023, held that if at all any grounds that are urged in the second Habeas Corpus Petition as a new ground and those grounds could have been raised in the first Habeas Corpus Petition itself, as they were already available at the time of filing the Habeas Corpus Petition and the petitioner or the detainee failed to raise those grounds, that cannot once again or again and again be raised.

7.The learned Additional Public Prosecutor further contended that the grounds raised in the present Habeas Corpus Petition were raised by the detainee in the earlier Habeas Corpus Petition in HCP(MD)No.1399 of 2024, either directly or indirectly and those grounds were already considered by the Division Bench of this Court and the HCP was dismissed. Since no new grounds are available, the present Habeas Corpus Petition is not maintainable.



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8.Heard the rival submissions made on behalf of the parties to the lis on hand.

9.The application of doctrine of constructive *res judicata* is confined to civil actions and civil proceedings. Therefore, it is inapplicable in cases of illegal detention and does not bar a subsequent petition for a writ of Habeas Corpus Petition under Article 226 of the Constitution of India. However, the circumstances under which a second Habeas Corpus Petition is maintainable is to be considered with reference to the grounds, which were available during the adjudication of the first Habeas Corpus Petition and the grounds, which were not available to the detainee during the adjudication of the first Habeas Corpus Petition. This distinction is essential for entertaining a second Habeas Corpus Petition against the same detention order.

10.In the event of entertaining second Habeas Corpus Petition without drawing distinction in the context of the grounds raised, it will lead to an anomalous situation, where multiple Habeas Corpus Petitions may be



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instituted challenging the same detention order. Secondly, there is a possibility of bench hunting by the litigants by filing repeated Habeas Corpus Petitions. Thirdly, the Habeas Corpus Petition will be treated as a bail petition, which is impermissible, since the detention order originally challenged is either confirmed or set aside. The only remedy available to the aggrieved person is to prefer an appeal before the Hon'ble Supreme Court of India.

11. In respect of the judgment of the Hon'ble Supreme Court of India in *Lallubhai Jogibhai Patel's case* (cited supra), the Hon'ble Supreme Court has settled the legal principle that the public policy is entirely inapplicable in illegal detention and does not bar a subsequent petition for a writ of Habeas Corpus under Article 32 of the Constitution on **fresh grounds**, which were not taken in the earlier petition for the same relief. The findings of the Apex Court cannot be taken undue advantage by the detainees for the purpose of maintaining a second Habeas Corpus Petition on the same grounds which were raised in the first Habeas Corpus Petition or the



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grounds which were very much available and not taken by the detinue at the time of filing the first Habeas Corpus Petition. **But if the ground raised in the second Habeas Corpus Petition was not at all available to the detinue at the time of filing of the first Habeas Corpus Petition, then the second Habeas Corpus Petition, if filed on fresh grounds, then alone, the second Habeas Corpus Petition is maintainable** in view of the principles considered by the Hon'ble Supreme Court of India in ***Lallubhai Jogibhai Patel's case*** (cited supra).

12.As far as the Judgment of the Division Bench of this Court in ***Revathi's case*** (cited supra) is concerned, though the learned Additional Public Prosecutor placed reliance on the judgment in the case of ***Geetha Vs. State of Tamil Nadu, represented by Secretary to Government and another*** reported in ***2006 (2) MLJ (Crl) 699***, for the proposition that a detinue cannot raise second Habeas Corpus Petition, a point which was available but not raised during the hearing of the first Habeas Corpus Petition and the judgment in ***Mohan @ Mohan Reddy Vs. Commissioner of Police and***



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another [2009 (2) CIJ 197], for the proposition that a second Habeas Corpus Petition can be filed only on new grounds that were not available at the time when the first Habeas Corpus Petition was not considered nor a finding was given by the Division Bench of this Court in the ***Revathi's case*** (cited supra).

13.However, the ground raised by the learned Additional Public prosecutor in ***Revathi's case*** (cited supra) is of paramount importance, since the distinction drawn between the grounds available and not taken in the first HCP and the grounds not available but taken in the second Habeas Corpus Petition is to be taken into consideration.

14.However, in the case of ***Boominathan vs. the State of Tamil Nadu and others***, [***H.C.P(MD)SR.No.10405 of 2023, dated 13.06.2023***], the Division Bench of this Court considered the proposition laid down in ***Geetha's case*** (cited supra), which reads as under:



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*“4. First of all, we are not accepting the said contention. It is not the case of the learned counsel for the petitioner that the said point was not available to the petitioner when the earlier Habeas corpus petition was filed. In this regard, it is useful to refer two Division Bench decisions of this Court rendered in **HCP. No. 94 of 2004 dated 28.01.2004 (Kasturi v. State of Tamil Nadu)** and **HCP. No. 142 of 2004 dated 06.02.2004 (S. Sarasa v. State of Tamil Nadu)**. In the above said decisions, the Division Bench observed that when a point raised in the second Habeas corpus petition was very well available at the time of hearing of the first Habeas corpus petition, the same cannot be agitated again and again in subsequent petitions. In view of the fact that the present ground was very well available to the petitioner at the time of hearing of the earlier Habeas corpus petition, we are of the view that the principle laid down in both the decisions is applicable to the case on hand. Further, it is fairly stated by the learned counsel for the petitioner that even this point has not been raised in the affidavit filed in support of the present petition.”*

15. Therefore, this Court has no hesitation in holding that a second Habeas Corpus Petition challenging the same detention order is maintainable only if the grounds taken in the second Habeas Corpus Petition



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were not available to the detainee at the time of filing or adjudication of the first Habeas Corpus Petition.

16.However, in respect of the grounds, which were available while instituting the first Habeas Corpus Petition and not taken by the detainee, the same will not provide any assistance for filing a second Habeas Corpus Petition. In clear terms, the second Habeas Corpus Petition is maintainable only if the grounds taken in the second Habeas Corpus Petition were not available to the detainee at the time of filing or adjudication of the first Habeas Corpus Petition and in no other circumstances, the second Habeas Corpus Petition is maintainable.

17.In the present case, the petitioner contends that certain grounds raised in the first Habeas Corpus Petition were not considered by the Division Bench of this Court, while dismissing the petition. Secondly, certain grounds were not even taken in the first Habeas Corpus Petition. In response, the Additional Public Prosecutor submitted that those grounds



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were available at the time of filing of the first Habeas Corpus Petition, but the petitioner has not raised those grounds which cannot be considered for entertaining the present second Habeas Corpus Petition.

18.In view of the discussions made above, this Court has no hesitation in arriving a firm conclusion that the present second Habeas Corpus Petition is not maintainable.

19.Accordingly, this Habeas Corpus Petition stands dismissed.

[S.M.S.,J.] & [G.A.M.,J.]
18.08.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

- 1.The Additional Chief Secretary to Government,
Represented by the State of Tamil Nadu,
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S.M.SUBRAMANIAM, J.
and
G.ARUL MURUGAN, J.

ps

ORDER MADE IN
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DATED : 18.08.2025