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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

AND

THE HON'BLE MR JUSTICE P.DHANABAL

H.C.P.(MD)No.164 of 2026

Chandiraleka

.. Petitioner / mother of the detenu
Vs.

1.The State of Tamilnadu,
Rep By,
The Principal Secretary to Government,
Home, Prohibition and Excise Dept,
Secretariat,
Chennai - 9.

2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

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

4.The Inspector of Police,
Srirangam Crime Police Station,
Trichy City.

.. Respondents



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Prayer :Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records, connected with the detention passed by the second respondent made in detention order No.C.No.35/Detention/C.P.O/T.C/2025 dated 27.03.2025 in detaining the detenu under section 2(f) 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 son, namely, Nagaraj, son of Kumaravel, aged about 21 years, who is detained in Central Prison, Trichy, before this Court.

For Petitioner : Mr.G.Karuppasamyandiyan
For Respondents : Mr.A.Thiruvadikumar,
Additional Public Prosecutor

ORDER

(Order of the Court was made by N. ANAND VENKATESH,J.)

The petitioner is the mother of the detenu, by name, Nagaraj, son of Kumaravel, aged about 21 years. The detenu has been detained by the second respondent by his order in detention order No.C.No. 35/Detention/C.P.O/T.C/2025 dated 27.03.2025 holding him to be a "Goonda", as contemplated under section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



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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. The petitioner is the mother of the detenue and had already moved a Habeas Corpus Petition before this Court in H.C.P.(MD).No.584 of 2025 and the same was dismissed by this Court by an order dated 05.12.2025. This is the second Habeas Corpus Petition filed before this Court.

4. In the considered view of this Court, the rule of *res judicata* does not apply when it comes to filing a Habeas Corpus Petition and therefore, there is no bar in the petitioner filing the present Habeas Corpus Petition and the same is maintainable.

5. This Court places reliance upon the judgment of the Hon'ble Apex Court in the case of ***Lallubhai Jogibhai Patel vs Union Of India & Ors*** reported in ***1981 SCC (Criminal) 463*** and the relevant portion is extracted hereunder.



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

6. The above judgment was subsequently relied upon by another Division Bench of this Court in the case of ***Revathi Vs. Government of Tamil, represented by the Principal Secretary to Government, Home Prohibition and Excise Department, Secretariat, Fort St.George, Chennai-9 and others*** reported in ***2024-2-L.W. (Crl.) 610*** and this Court held that the dismissal of the earlier Habeas Corpus Petition will not be a bar in maintaining the subsequent petition by applying the principles of constructive res judicata.

7. The learned Additional Public Prosecutor also brought to our notice, the judgment of the Division Bench of this Court in the case of ***Mirthunaj Kumar Vs. the State of Tamil Nadu and others*** reported in



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2025-2-L.W. (Crl.) 321 and submitted that in a case where a ground is available even while filing the earlier petition and in spite of the same, that ground is not taken and the earlier Habeas Corpus Petition is dismissed, a fresh Habeas Corpus Petition cannot be filed, since it will be barred by principles of constructive res judicata.

8. In our considered view, the law is now too well settled by the Hon'ble Apex Court in the judgment in **Lallubhai's** case referred supra. The ratio in that judgment is that the principle of constructive *res judicata* will not apply in cases involving the liberty of a person and those are principles which are applied only in the civil proceedings. This judgment of the Hon'ble Apex Court has been followed by our Court in the judgment in **Revathi's** referred supra. Therefore, we deem it fit to follow the judgment in **Revathi's** case, which has correctly applied the earlier judgment of the Hon'ble Apex Court in Lallubhai's case.

9. Accordingly, the objection raised by the learned Additional Public Prosecutor on this issue is rejected.



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10. Apart from raising other issues, an important point that was raised by the learned counsel appearing for the petitioner is that ultimately, the detenu had not filed any bail application till the detention order was passed on 27.03.2025 and the similar case that was relied upon by the Detaining Authority is not a similar case. It was also contended that two adverse cases involved minor offence and in the light of the fact that no bail application was moved in the ground case, there was no necessity for passing a detention order against the detenu.

11. The learned Additional Public Prosecutor placed heavy reliance upon the judgment of the Full Bench in the case of *N.Fathima Vs. State of Tamil Nadu and Others* reported in **2024 (2) CTC 673**.

12. The learned counsel appearing for the petitioner relied upon the latest judgment of the Hon'ble Apex Court in *Crl.Appeal No.239 of 2026 dated 13.01.2026* in the case of *Alagu Vs. The State of Tamil Nadu and Others*.



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13. On carefully going through the impugned detention order, it is seen that the detenu was arrested and remanded to judicial custody on 01.03.2025. The detention order came to be passed on 27.03.2025. Till the date on which the detention order was passed, no bail application was filed by the detenu. Apart from that, the similar case that was relied upon by the Detaining Authority relating to an order passed in CrI.M.P.No.3 of 2025 dated 03.01.2025 was a case where there was no previous case against the accused and it was a solitary case and while granting bail, this factor was taken into consideration and the Court also took into consideration the period of incarceration that was suffered by the accused in that case.

14. At this juncture, we have to bestow our attention to the latest judgment of the Hon'ble Apex Court in *Alagu's case* that was relied upon by the learned counsel appearing for the petitioner. The relevant portions in the said order are extracted hereunder.

15. In Rekha (supra), this Court, in paragraphs 7 and 27, observed:

“7. A perusal of the above statement in para 4 of the grounds of detention shows that no details have been given



about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein nor the application number nor whether the bail orders were passed in respect to the co-accused on the same case, nor whether the bail orders were passed in respect of other co accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that in similar cases bails were granted by the courts. In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be



believed.”

16. In Huidrom Konungjao Singh (supra), this Court was pleased to observe that grant of bail to some other person in some other case cannot be a ground to believe that the detenue, who is involved in some other case, is likely to be released on bail. Relevant paragraphs of this decision are extracted below:

“12. In Rekha v. State of T.N., this Court while dealing with the issue held:

“7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of co- accused on the same case, nor whether the bail orders were passed in respect of other co- accused in cases on the same footing as the case of the accused....

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then of course, it could be argued that there is likelihood of the accused being



released on bail, because it is normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody “provided he has moved a bail application which is pending.” It follows logically that if there is no bail application pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenue being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground.” Thus, it is evident from the aforesaid judgment that it is not the similar case i.e., involving similar offense. It should be that the co-accused in the same offense is enlarged on bail and on the basis of which the detainee could be enlarged on bail.

“15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released



in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case had not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of the Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eye of the law.”

17. In Rajesh Gulati (supra), this Court held that if the subjective satisfaction of the detaining authority that detenu, already in jail, is likely to be released on bail is vitiated for lack of cogent material to draw such satisfaction, subsequent grant of bail is not a ground to sustain the detention order which stood vitiated for lack of material on the date when the order of detention was passed.

15. A careful reading of the above judgment shows that a person, who is in custody can be subjected to a detention order if the Detaining Authority is aware that the detenu is in actual custody and the Detaining Authority has a reason to believe, on the basis of a reliable material before him that there



is a real possibility of the release of the detenu on bail and that on being so released, in all probability, the detenu will indulge in prejudicial activities and therefore in order to prevent such an eventuality, such a detention order is essential to prevent the detenu from indulging in any further prejudicial activities.

16. For this purpose, the Detaining Authority while arriving at a subjective satisfaction must have a cogent material to draw such a conclusion.

17. In the case on hand, there are two factors which has to be necessarily taken into consideration. The first is that admittedly no bail application was filed by the detenu as on the date of the passing of the detention order on 27.03.2025 even though he was in judicial custody from 01.03.2025. The second fact is that the Detaining Authority has taken into consideration an order that was passed in Crl.M.P.No.3 of 2025 dated 03.01.2025. That was a case where there was a solitary incident which resulted in the Court granting bail considering that fact. In the case on hand, there were two adverse cases against the detenu and therefore, there



were previous cases against the detenu and the order that was relied upon by the Detaining Authority certainly is not a similar case. Thus, in the absence of any bail application filed as on the date of the passing of the detention order and in the absence of the order relied upon by the Detaining Authority not being a similar case, this Court is of the view that there is lack of cogent material for the Detaining Authority to draw such subjective satisfaction. Hence, on that ground, the detention order stands vitiated.

18. In the result, the Habeas Corpus Petition is allowed and the order of detention in detention order No.C.No.35/Detention/C.P.O/T.C/2025 dated 27.03.2025 is set aside. The detenu, viz., Nagaraj, son of Kumaravel, aged about 21 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(N.A.V.,J..) (P.D.B.,J.)
03.03.2026

Index : Yes / No
Internet : Yes / No
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To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Dept,
Secretariat,
Chennai - 9.
2. The Commissioner of Police,
Tiruchirappalli City.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
4. The Inspector of Police,
Srirangam Crime Police Station,
Trichy City.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**N. ANAND VENKATESH,J.
AND
P.DHANABAL,J.**

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