



HCP(MD)No.737 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.10.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.737 of 2022

S.Syed Ali Fathima

... Petitioner /Mother of the Detenu

Vs.

1.State of Tamil Nadu

Rep. by the Additional Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai-600 009.

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

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

...Respondents



HCP(MD)No.737 of 2022

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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 connected with the detention order passed in H.S.(M) Confdl.No.66 of 2022 dated 12.04.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Mohammed Kasim, aged about 21 years, S/o.Syed Ibrahim, now detained at the Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.Ka.Raamakrishnan

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The petitioner is the mother of the detenu viz., Mohammed Kasim, aged about 21 years, S/o. Syed Ibrahim. The detenu has been detained by the second respondent by his order in H.S.(MD)Confdl.No.66/2022, dated



HCP(MD)No.737 of 2022

12.04.2022 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.

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 would mainly focus his argument on the ground the detaining authority, after taking note of the fact that there was no bail petition pending as on the date of the detention order, took into consideration the order passed in CrI.O.P. (MD)No.23893 of 2016 by this Court and came to the conclusion that there is a likelihood of detenu being granted bail. The learned counsel submitted that the order that was relied upon by the detaining authority is not a similar case and hence, there is non application of mind.



HCP(MD)No.737 of 2022

WEB COPY

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition.

5. Insofar as the main ground that was urged by the learned counsel for the petitioner, We have carefully gone through the order passed in CrI.O.P.(MD)No.23893 of 2016, which was relied upon by the detaining authority to come to the conclusion that there is a likelihood of the detenu coming out on bail. It is seen from the said order that this Court had taken into consideration the fact that charge sheet had been filed in the said case and that was the main ground, on which the bail was granted by this Court. The facts as stated in the bail order clearly reflects that it is not a similar case and it cannot be taken into consideration to come to the conclusion that the detenu is likelihood of being granted bail in the case on hand. Hence, the detention order suffers from non-application of mind. The impugned detention order is therefore liable to be quashed.



HCP(MD)No.737 of 2022

6.In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(MD) Confdl.No.66/2022, dated 12.04.2022, passed by the second respondent is set aside. The detenu, viz., Mohammed Kasim, aged about 21 years, S/o.Syed Ibrahim, is directed to be released forthwith unless his detention is required in connection with any other case.

(J.N.B.,J.) (N.A.V.,J.)
14.10.2022

Index : Yes/No
Internet : Yes
ta/Ns

To:

- 1.The Additional Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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