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HCP(MD)No.1008 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2022

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

H.C.P.(MD)No.1008 of 2022

Amirtha Selvam

.. Petitioner / mother
of the son-in-law
of the detenu

Vs.

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

2.State represented by
The District collector and District Magistrate
Tirunelveli District, Tirunelveli.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records from the 2nd respondent in M.H.S.Confdl. No.63/2022 dated 11.05.2022 by setting aside the said order of detention passed by the second respondent and setting the detenu Azhagarsamy, aged 56 S/o.Chendursamy at liberty now detained in the



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Central Prison, Palayamkottai.

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For Petitioner : Mr.K.Jeyamohan
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 son-in-law of the detenu viz., Azhagarsamy aged about 56 years, S/o.Chendusamy. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No. 63/2022 dated 11.05.2022 holding him to be a "Goonda", as contemplated under Section 2(f) 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 several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly



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focus his argument on the ground that the detaining authority after being aware of the fact that no bail application has been filed by the detenu, came to the conclusion that there is likelihood of the detenu being let out on bail on the ground that co-accused was granted bail in CrI.M.P.No.3499/2022 on 28.04.2022. The learned counsel for the petitioner submitted that bail was granted to the co-accused purely on medical grounds and bail was not granted on merits and therefore, the learned counsel submitted that the similar case that has been relied upon by the detaining authority is not similar and hence, the detention order is liable to be interfered with.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. He would further submit that investigation was completed and charge sheet was filed before the Judicial Magistrate No.V, Tirunelveli on 24.06.2022 within the stipulated period and pending in S.C.No.611/2022 and the next date of hearing is 05.12.2022 for supply of copies.

5. On carefully going through the booklet and the detention order, it is seen that the detaining authority had taken note of the fact that there is



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likelihood of the detenu being let out on bail, since the co-accused was granted bail in CrI.M.P.No.3499/2022 on 28.04.2022. However, the similar case that has been relied upon by the detaining authority is not similar to that of the present case, since bail was granted to the co-accused only on medical grounds and hence, it reflects non application of mind on the part of the detaining authority.

6. In view of the above, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl. No.63/2022 dated 11.05.2022 passed by the second respondent is set aside. The detenu, viz., Azhagarsamy, S/o.Chendursamy aged about 56 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (N.A.V.,J.)
29.11.2022

Internet : Yes
RR



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To

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

2.The District collector and District Magistrate
Tirunelveli District, Tirunelveli.

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

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH, J.
and
N. ANAND VENKATESH, J.

RR

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