



HCP(MD)No.1063 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.11.2022

CORAM

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

H.C.P.(MD)No.1063 of 2022

Samuthiram

... Petitioner / Father of the Detenue

Vs.

- 1.State of Tamil Nadu,
Rep by 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 Superintendant of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

...Respondents

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 in M.H.S.Confdl.No.65 of 2022 dated 12.05.2022 on



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the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenue or body of the detenue namely, the petitioner's son ie., Esakkipandi, aged about 25 years, S/o.Samudram, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

The petitioner is the father of the detenu viz., Esakkipandi, aged about 25 years, S/o.Samudram. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.65 of 2022 dated 12.05.2022 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 focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. Apart from the other grounds, the main ground that was urged by the learned counsel for the petitioner is that the detaining authority, after being aware of the fact that no bail application was filed by the detenu, came to a conclusion that there is a likelihood of the detenu being let out on bail, by taking into consideration the order passed in CrI.M.P.No.4512 of 2015. The learned counsel for the petitioner submitted that the order that was relied upon by the detaining authority is not a similar case.



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5. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.

6. We have carefully went through the order passed in CrI.M.P.No. 4512 of 2015. That is the case, where the charge against the accused therein was under Section 394 of IPC. That apart, the name of the accused also did not find place in the FIR and also the accused therein had also suffered incarceration for a long time. In the present case, the adverse case was registered for the offence under Section 394 r/w 397 of IPC. That apart, there are no previous cases against the accused in that case. Whereas, there is one adverse case and one ground case against the detenu. For all these reasons, the order that was relied upon by the detaining authority cannot be considered to be a similar case and therefore, the detention order clearly suffers from non application of mind. 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.65 of 2022 dated 12.05.2022 passed by the



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second respondent is set aside. The detenu, viz., Esakkipandi, aged about 25 years, S/o.Samudram, 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.)
30.11.2022

Index : Yes/No
Internet : Yes
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To:

- 1.State of Tamil Nadu,
Rep by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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- 2.The District Collector and District Magistrate,
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Tirunelveli.
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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