



HCP(MD)No.124 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.07.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

H.C.P.(MD)No.124 of 2023

A.Velkani

.. Petitioner /Mother of Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.

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

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records in pursuant to the proceedings of the second respondent in Detention Order in H.S.



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(M).Confdl.No.230/2022 dated 10.11.2022 quash the same and consequently direct the respondents to produce the detenu, namely, Sudalai @ Sudalai Mahalingam, S/o.Samuvel, aged 28 years who is now detained in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.K.Sathish Kumar
for M/s.M.Anantha Devi
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu viz., Sudalai @ Sudalai Mahalingam, aged about 28 years, S/o.Samuvel. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl. No.230/2022 dated 10.11.2022 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.



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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. 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 the detaining authority has relied upon the order passed in CrI.O.P.(MD).No.23893/2016 dated 23.12.2016 and came to the conclusion that in a similar case bail has been granted and that there is likelihood of the detenu released on bail. The learned counsel submitted that the detaining authority was aware of the fact that the detenu filed bail application in the ground case and the same was dismissed. The learned counsel for the petitioner therefore submitted that the order relied upon by the detaining authority is not similar and there is non application of mind on the part of the detaining authority.



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4. The learned Additional Public Prosecutor has not filed his counter.

However, he strongly opposed the Habeas Corpus Petition. It is further submitted that investigation has been completed in this case and final report has been filed in S.C.No.84 of 2023 and the same is pending before the I Additional District Court, Thoothukudi.

5. On carefully going through the detention order, it is seen that in the order that was relied upon by the detaining authority in CrI.O.P.(MD).No.23893/2016 dated 23.12.2016, the accused therein had was granted bail for the offences under Sections 294(b), 302 and 506(ii) IPC. However, in the present case, the offences involved are Sections 302 and 506(ii) IPC. Hence, the order that was relied upon by the detaining authority cannot be considered to be an order passed in a similar case.

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.



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7. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M) Confdl.No.230/2022 dated 10.11.2022 passed by the second respondent is set aside. The detenu, viz., Sudalai @ Sudalai Mahalingam, S/o.Samuvel, aged about 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R.,J.) (M.N.K.,J.)
19.07.2023

NCC : Yes / No
Index : Yes / No
Lm/mbi

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.
- 2.The District Collector and District Magistrate,
Tuticorin,
Tuticorin District.
- 3.The Superintendent of Prison,
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4. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George,
Chennai.

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



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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

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