



HCP(MD)No.145 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.07.2023

CORAM

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

H.C.P.(MD)No.145 of 2023

Sivakumar

.. Petitioner / Detenu

Vs.

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St George, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records connected with the detention order of the second respondent in Detention Order No.125/2022,



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dated 26.12.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Sivakumar, S/o.Bethulu, aged about 45 years, now detained as “Goonda” at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the detenu viz., Sivakumar, aged about 45 years, S/o.Bethulu. The detenu has been detained by the second respondent by his order in Detention Order No.125/2022, dated 26.12.2022 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.



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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 in Paragraph No.5 of the detention order, the detaining authority had inferred that if the detenu comes out on bail, there is every possibility of the detenu indulging in further activities in future, which is bereft of particulars and on that score, 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. It is further submitted that investigation has been completed in this case and final report has been filed in P.R.C.No.14/2023 and the same is pending before the Judicial Magistrate Court, No.III, Dindigul.

5. The detaining authority, while recording the detenu's involvement in the solitary case in Crime No.332/2022, had observed that there is a real possibility of the detenu coming out on bail since bails are being



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granted by the appropriate Courts in such cases and had referred to a similar case, wherein, bail was granted to one Manikandan alias Mani in Cr.M.P.No.971/2020 dated 24.02.2020 by the Principal Sessions Judge, Madurai. While observing so, the detaining authority had stated that if the detenu comes out on bail, he will indulge in further activities in future, which will be prejudicial to the maintenance of the public order. When the detenu has involved himself in a solitary case, which is the ground case and no reference has been made to any other adverse cases, on what basis the detaining authority had apprehended that the detenu would indulge in further activities in future is not known.

6. A co-ordinate Bench of this Court, in the case of ***Jebasta @ Jebasta Gnanamalar Vs. The State of Tamil Nadu and others*** passed in ***H.C.P.(MD).No.1815 of 2022 vide order dated 21.02.2023***, had an occasion to deal with the similar aspect in the following manner:

“4. The possibility of releasing the accused on bail was imminent and if he is released on bail, his presence



likely to cause prejudice to the public peace and therefore, the preventive detention order been slapped after due consideration of merit and careful consideration of relevant records. It is stated in the counter that recourse in normal criminal law effectively preventing him from indulging in such activity in future which are prejudice to the maintenance of the public order. The detaining authority has arrived at such a conclusion based on the sole and solitary case against the petitioner that too, arising out of a property dispute which is purely civil in nature and except this one case, there is no adverse record against the detenu to infer that he had been indulging in such activity in the past or he will indulge in such activity in future. Mere apprehension that he will indulge in such activity in future is not suffice to invoke the provision of Act 14 of 1982. There must be some prima facie material to arrive at such conclusion. In this case, this Court finds that no such material. Therefore for bereft of supportive documents, the detention order is vitiated.”

Thus, when the detenu did not have any previous or adverse cases as per the detention order, the subjective satisfaction arrived at by the detaining



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authority, to the effect that the detenu is likely to indulge in further activities in future, is baseless and would amount to non-application of mind. Hence, the impugned order of detention is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.125/2022, dated 26.12.2022 passed by the second respondent is set aside. The detenu, viz., Sivakumar, S/o.Bethulu, aged about 45 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.)
26.07.2023

NCC : Yes / No
Index : Yes / No

PNM/RR



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To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St George, Chennai - 600 009.
2. The Joint Secretary
Public (Law and Order)
Secretariat, Chennai.
3. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
4. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
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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