



HCP(MD)No.197 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.197 of 2023

Bagavathiammai

.. Petitioner /
Mother of Detenu

Vs.

- 1.The State
Rep.by The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai - 600 009.
- 2.The District Collector/District Magistrate,
Kanyakumari District,
at Nagercoil.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records of the detention order passed in P.D.No.75/2022, dated 31.12.2022 on the file of the second



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respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Markandan, S/o.Rajamoni, aged about 36 years, who is detained at Central Prison, Palayamkottai, Tirunelveli and set him at liberty.

For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

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ORDER

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

The petitioner is the mother of the detenu viz., Markandan aged about 36 years, S/o.Rajamoni. The detenu has been detained by the second respondent by his order in P.D.No.75/2022, dated 31.12.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 the detaining authority after being aware of the fact that there was no bail application filed by the detenu came to the conclusion that there is a real possibility of the detenu coming out on bail by relying upon the order passed in CrI.M.P.No.343/2021 dated 30.06.2021, since in that case, bail was granted to the accused therein on the ground that . The learned counsel therefore submitted that the order that was relied upon by the detaining authority was not a similar and the offences involved therein are under Sections 366 and 449 IPC, however, in the present case, the offences are under Sections 366, 342, 376(3) IPC 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.



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5. On carefully going through the detention order, the detaining authority was aware of the fact that no bail application was filed by the detenu. However, the detaining authority took into consideration the order passed in CrI.M.P.No.343/2021 dated 30.06.2021 and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that the offences involved therein are under Sections 366 and 449 IPC. However, in the present case, the offences under Sections 366, 342 and 376(3) IPC and hence, the bail order that was relied upon by the detaining authority cannot be considered to be a similar one.

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 P.D.No.75/2022, dated 31.12.2022 passed by the second respondent is set aside. The detenu, viz.Markandan S/o.Rajamoni, aged



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about 36 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

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai - 600 009.
2. The Joint Secretary
Public (Law and Order)
Secretariat, Chennai.
3. The District Collector/District Magistrate,
Kanyakumari District,
at Nagercoil.
4. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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