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HCP(MD)No.221 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2023

CORAM

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

H.C.P.(MD)No.221 of 2023

Ramayee

.. Petitioner /Mother of the Detenu

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in proceedings in C.No.105/Detention/C.P.O/T.C/2022 dated 12.08.2022 in detaining the detenu under Section 2(ggg) of the Tamilnadu Act 14 of 1982



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as a Sexual Offender and quash the same and direct the respondents to produce the detenu namely Prakash, S/o.Cinnadhurai, Male, aged about 22 years, who is detained at Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.Navaneetharaja

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., Prakash, aged about 22 years, S/o.Chinnadurai. The detenu has been detained by the second respondent by his order in C.No.105/Detention/C.P.O/T.C/2022 dated 12.08.2022 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 has relied upon the order passed in Cr.M.P.No.423/2021 dated 20.04.2021 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 is pending. 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.

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 charge sheet has been filed in Spl.S.C.No.20/2023 and the same is pending before the Mahila Court, Tiruchirappalli.



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5. On carefully going through the detention order, it is seen that in the order that was relied upon by the detaining authority in Cr.M.P.No.423/2021 dated 20.04.2021, the accused therein was enlarged on bail for the offences under Sections 366, 506(i) of IPC and Section 7 and 8 of POCSO Act, 2012. However, in the present case, the offences involved are under Sections 366, 294(b), 506(i) IPC and 3(a), 4(2) r/w 18, 14(1)(2), 15 of POCSO Act, 2012 and 66E, 67B(b) of I.T. Act and 3(1)(w), (i) of SC/ST (POA) Act. 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.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.105/Detention/C.P.O/T.C/2022 dated 12.08.2022 passed by the second respondent is set aside. The detenu, viz., Prakash,



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S/o.Chinnadurai, aged about 22 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.)
10.08.2023

NCC : Yes / No
Index : Yes / No
Lm

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 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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