



H.C.P(MD)No.316 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.07.2023

CORAM :

THE HONOURABLE MR JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

H.C.P(MD)No.316 of 2023

M.Bhuvaneswari

.. Petitioner

vs.

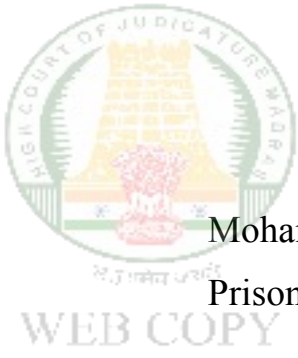
1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

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

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records relating to the Detention Order passed by the second respondent in C.No. 180/Detention/C.P.O/T.C/2022 dated 14.12.2022 and quash the same and direct the respondents produce the body or person of the detenu, namely,



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Mohanraja, S/o.Sakthivel, aged about 36 years (now detained at Central Prison, Tiruchirappalli) before this Court and set him at liberty.

For Petitioner : Mr.V.Selvakumar

For respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.S.RAMESH, J.]

The petitioner is the wife of the detenu viz., Mohanraja, S/o.Sakthivel, aged about 36 years. The detenu has been detained by the second respondent by order in C.No.180/Detention/C.P.O/T.C/2022, dated 14.12.2022, 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.



3. The learned counsel appearing for the petitioner mainly focussed his argument on the ground that bail was granted to the detenu by the learned Judicial Magistrate No.I, Tiruchirappalli in Cr.M.P.Nos.33650 of 2022 and 33652 of 2022, on 13.12.2022. However, on the very next day, i.e., on 14.12.2022, the detaining authority proceeded to pass the detention order, stating that sureties have not been produced by the detenu so far and there is likelihood of the detenu coming out on bail by producing sureties. He would submit that such a detention order suffers from non-application of mind and is liable to be set aside.

4. The learned Additional Public Prosecutor strongly opposed this petition by filing counter.

5. While passing the detention order on 14.12.2022, the detaining authority had observed that, the detenu had filed bail applications in C.C.B. Cr.Nos.24 of 2022 and 26 of 2022 before the learned Judicial Magistrate No.I, Tiruchirappalli in Cr.M.P.Nos.33650 of 2022 and 33652 of 2022, in which applications, bail was granted to the detenu on 13.12.2022, but the



detenue has not produced sureties so far. With this observation, the detaining authority had inferred that the detenu is likely to come out on bail by producing sureties. Such a subjective satisfaction is frowned upon in the case of *Selvakumar vs. The Secretary to Government, State of Tamil Nadu, Home, Prohibition and Excise Department, in H.C.P.(MD)No.948 of 2018, dated 05.07.2018*, in the following manner :-

"4. We fail to understand how the Detaining Authority can insist that the detenu to produce the sureties on the very date of the order of bail granted by this Court and how not doing so can be stated as a reason informing likelihood of the detenu being released on bail and therefore, the need for his detention.

5. The Detaining Authority is warned that his approach, besides being unjust, can very well be seen as contempt of Court. However, for the present, this Court would not make an issue of it, but, the Detaining Authority as also the Sponsoring Authority would, in future, act with due diligence and respect to the orders of this Court."



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6. In view of the above Judgement, the subjective satisfaction, which the detaining authority had arrived at, cannot be sustained and the same is liable to be interfered with by this Court.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.180/Detention/C.P.O/T.C/2022, dated 14.12.2022, passed by the second respondent is set aside. The detenu, viz., Mohanraja, S/o.Sakthivel, aged 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.)

25.07.2023

NCC : Yes/No
Index : Yes/No
Speaking/Non-speaking order

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To

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- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary,
Public (Law and Order) Department,
Fort St.George, Chennai.



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

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