



H.C.P(MD)No.343 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.343 of 2023

Kanthammal

.. Petitioner

vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
A.R.Line Road, Gorippallam,
Palayamkottai, Tirunelveli City - 627 002.

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

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records pertaining to the detention order dated 23.12.2022 passed by the second respondent in No. 89/BCDFGISSSV/2022 and quash the same and produce detenu,



H.C.P(MD)No.343 of 2023

Esakkipandi @ Siva, S/o.Murugan, aged about 26 years, detained now at the Central Prison Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.S.Micheal Heldon Kumar

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 mother of the detenu viz., Esakkipandi @ Siva, S/o.Murugan, aged about 26 years. The detenu has been detained by the second respondent by order in No.89/BCDFGISSSV/2022 dated 23.12.2022 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 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.2077 of 2019 dated 11.03.2019. The learned counsel for the petitioner submitted that the order relied upon by the detaining authority is not similar 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 counter.

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.M.P.No.2077 of 2019 dated 11.03.2019, the accused therein was enlarged on bail since co-accused was released on bail. However, in the present case, the co-accused



H.C.P(MD)No.343 of 2023

are still in jail. 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.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.89/BCDFGISSSV/2022 dated 23.12.2022 passed by the second respondent is set aside. The detenu, viz., Esakkipandi @ Siva, S/o.Murugan, aged about 26 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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H.C.P(MD)No.343 of 2023

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WEB COPY

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Central Prison,
Palayamkottai, Tirunelveli.
- 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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H.C.P(MD)No.343 of 2023

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and
M.NIRMAL KUMAR, J.

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H.C.P(MD)No.343 of 2023

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