



HCP(MD)No.361 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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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.361 of 2023

Gopal Mari

.. Petitioner (Wife of the Detenu)

Vs.

1.The Government of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and the District Magistrate,
Thoothukudi District,
Thoothukudi.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a writ of Habeas Corpus, to call for the order made in H.S.



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(M)Confdl.No.06/2023 dated 12.01.2023 on the file of the second respondent and quash the same and consequently direct the respondents to produce the petitioner's husband namely "Muniyandi, S/o.Palraj, aged about 42 years" who is now detained as a detenu at Central Prison, Palayamkottai, Tirunelveli or his corpus or body before this Court and set him at liberty forthwith.

For Petitioner : Mr.J.Sankara Pandian

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz., Muniyandi, aged about 42 years, S/o.Paulraj. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl.No.06/2023 dated 12.01.2023 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.



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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. 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.306/2019 dated 24.01.2019 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 by filing bail application. 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 has not filed his counter. However, he strongly opposed the Habeas Corpus Petition.



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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.306/2019 dated 24.01.2019, the accused therein was enlarged on bail for the offences under Sections 5(j)(ii), 5(l), 6 of POCSO Act, 2012 and 506(i) of IPC. However, in the present case, the offences involved are under Sections 7, 8 of POCSO Act, 2012 @ 4, 7, 8 and 18 of POCSO Act, 2012. 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 H.S.(M)Confdl.No.06/2023 dated 12.01.2023 passed by the second respondent is set aside. The detenu, viz., Muniyandi, S/o.Paulraj,



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aged about 42 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 Additional Chief Secretary to Government,
The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and the District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 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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