



HCP(MD)No.377 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.07.2023

CORAM

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

H.C.P.(MD)No.377 of 2023

Petchiammal

.. Petitioner/Mother of the Detenu

Vs.

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

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

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

4.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi 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 relating to the



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the detention order passed by the second respondent in H.S.(M)Confdl.No. 261 of 2022, dated 13.12.2022, quash the same and direct the respondents to produce the body or person of the detenu namely, Muthulingam, aged about 25 years, S/o.Jeyaraj, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.Mano Kumar

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., Muthulingam, aged about 25 years, S/o.Jeyaraj. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl.No.261/2022, dated 13.12.2022, holding him to be a "Goonda", as contemplated under Section 2(f) of the 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 by this Court, dated 10.06.2016, in CrI.O.P.(MD)No.8465 of 2016. The learned counsel therefore submitted that the order that was relied upon by the detaining authority was not similar and the offences involved are under Sections 147, 148 and 302 I.P.C. and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 @ 147, 148 and 302 r/w. 120-B I.P.C. and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 and on that score, the detention order is liable to be interfered with.

4. Though the respondents have not filed counter affidavit, the learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition.



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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 dated 10.06.2016, passed in CrI.O.P.(MD)No.8465 of 2016 and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that this Court considering the fact that the occurrence took place on 02.04.2015 and investigation was completed and case had been taken on file and also considering the reason given by the petitioner therein that due to illness of his father, he did not comply with the condition imposed on him by the Trial Court and he was in judicial custody from 20.04.2016, had granted bail to him. However, in the present case, the F.I.R. was registered for offences under Sections 147, 148, 294(b), 324, 307, 302 and 506(ii) r/w. 109 and 120-B I.P.C. and Section 3(1)(r), 3(1)(s) and 3(2)(v) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 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.



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7. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M)Confdl.No.261/2022, dated 13.12.2022, passed by the second respondent is set aside. The detenu, viz., Muthulingam, aged about 25 years, S/o.Jeyaraj, is directed to be released forthwith unless his detention is required in connection with any other case.

NCC : Yes / No
Index : Yes / No

(M.S.R., J.) (M.N.K., J.)
25.07.2023

To

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

2.The District Collector and District Magistrate,
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Thoothukudi.

3.The Superintendent of Prison,
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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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