



HCP(MD)No.410 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 31.07.2023

CORAM

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

H.C.P.(MD)No.410 of 2023

Udhayakumar

.. Petitioner / Detenu

Vs.

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

.. Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in No. 03/BCDFGISSSV/2023, dated 01.02.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Udhayakumar, S/o.Muthu, aged about 36 years, now detained as “Drug



HCP(MD)No.410 of 2023

Offender” at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the detenu viz., Udhayakumar, S/o.Muthu, agend about 36 years. The detenu has been detained by the second respondent by his order in No.03/BCDFGISSSV/2023, dated 01.02.2023 holding him to be a "Drug Offender", as contemplated under Section 2(e) 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.



HCP(MD)No.410 of 2023

WEB COPY

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 though the detaining authority was aware of the fact that there is no bail application filed by the detenu, has relied upon the order passed in CrI.M.P.No.3023/2022, dated 28.11.2022 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 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.

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. 3023/2022, dated 28.11.2022, the accused therein had suffered more than 61 days of incarceration and the accused therein was enlarged on bail under



HCP(MD)No.410 of 2023

Section 167(2) Cr.P.C. 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 No.03/BCDFGISSSV/2023, dated 01.02.2023 passed by the second respondent is set aside. The detenu, viz., Udhayakumar, S/o.Muthu, aged about 30 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.)
31.07.2023

NCC : Yes / No
Internet : Yes

PNM/RR



HCP(MD)No.410 of 2023

To

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



WEB COPY



HCP(MD)No.410 of 2023

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

PNM/RR

H.C.P.(MD)No.410 of 2023

31.07.2023