



HCP(MD)No.466 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.07.2023

CORAM

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

H.C.P.(MD)No.466 of 2023

Litten Prabhu

.. Petitioner / Brother
of Detenu

Vs.

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

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

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

.. Respondents



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PRAAYER: 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 detention order passed by the second respondent in H.S.(M)Confdl.No. 270/2022, dated 29.12.2022 and quash the same and direct the respondents to produce the detenu Thiru.Immanuel @ Abdullah, S/o.Johnraj, Male, aged 33, who is detained at Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the brother of the detenu viz., Immanuel @ Abdullah aged about 33 years, S/o.Johnraj. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl.No.270/2022, dated 29.12.2022 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.



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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 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.O.P.(MD) No.23893/2016. The learned counsel therefore submitted that the order that was relied upon by the detaining authority was not similar and the offences in the said case are under Sections 294(b), 302 and 506(ii) IPC, however, in the present case, the offences are under Sections 302 IPC 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 his counter. He further submitted that on



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completion of investigation, charge sheet has been laid in C.C.No.157/2022 and the same is pending before the Mahila Court, Tuticorin.

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 passed in CrI.O.P.(MD) No.23893/2016 dated 23.12.2016 and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that the accused therein was granted bail on considering the period of incarceration and the offences therein are under Sections 294(b), 302 and 506(ii) IPC. However, in the present case, the offence is under Section 302 IPC 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.270/2022, dated 29.12.2022 passed by the second respondent is set aside. The detenu, viz., Immanuel @ Abdullah S/o.Johnraj, aged about 33 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.)
26.07.2023

NCC : Yes / No

Index : Yes / No

PNM/RR

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai - 600 009.
- 2.The Joint Secretary
Public (Law and Order)
Secretariat, Chennai.
- 3.The District Collector/District Magistrate,
Thoothukudi District, Thoothukudi.
- 4.The Superintendent of Prison,
Central Prison,Palayamkottai, Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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M.NIRMAL KUMAR,J.

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