



HCP(MD)No.491 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.07.2023

CORAM

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

H.C.P.(MD)No.491 of 2023

A.Xavier Edward @ Edward

.. Petitioner/Father of the Detenu

Vs.

1.State of Tamil Nadu

Represented by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

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

.. Respondents

PRAYER: 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 passed in P.D.No.55 of 2022, dated 25.08.2022, on the



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file of the second respondent herein, quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's son, Ashok @ Ashok Antony @ Ajo, aged 25 years, S/o.Xavier Edward @ Edward, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz., Ashok @ Ashok Antony @ Ajo, aged 25 years, S/o.Xavier Edward @ Edward. The detenu has been detained by the second respondent by his order in P.DNo.55/2022, dated 25.08.2022, 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 Cr.M.P.No.937/2022, dated 28.02.2022. The learned counsel therefore submitted that the order that was relied upon by the detaining authority was 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 affidavit.



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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 passed in Crl.M.P.No.937/2022, dated 28.02.2022, and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that since the accused therein was not present in the scene of occurrence and all the properties were recovered and the accused therein left the place before the occurrence, bail was granted to him. Hence, the order that was relied upon by the detaining authority cannot be considered to be similar.

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 P.DNo.55/2022, dated 25.08.2022, passed by the second respondent is set aside. The detenu, viz., Ashok @ Ashok Antony @ Ajo,



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aged 25 years, S/o.Xavier Edward @ Edward, 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.)
07.07.2023

NCC : Yes / No
Index : Yes / No
smn2/RR

To

- 1.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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