



HCP(MD)No.595 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.09.2023

CORAM

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

H.C.P.(MD)No.595 of 2023

P.Ponmani

.. Petitioner

Vs.

1.State of Tamil Nadu

rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

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

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

.. Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, to call for the entire records connected with the detention order passed in M.H.S.Confdl. No. 31/2023 dated 24.03.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the



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detenu namely the petitioner's son ie., Petchimuthu aged about 23 years, S/o.Paulpandi, 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.Thiruvadikkumar
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu viz., Petchimuthu S/o.Paulpandi, aged about 23 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl. No.31/2023 dated 24.03.2023 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.

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. The learned counsel appearing for the petitioner mainly focussed his argument on the ground that bail was granted to the detenu by the learned Principal Sessions Court, Tirunelveli in Cr.M.P.No.3741 of 2023 on 23.03.2023. However, on the very next day, i.e., on 24.03.2023, the detaining authority proceeded to pass the detention order, stating that sureties have not been produced by the detenu so far and there is likelihood of the detenu coming out on bail by producing sureties. He would submit that such a detention order suffers from non-application of mind and is liable to be set aside.

4. The learned Additional Public Prosecutor strongly opposed this petition by filing counter.

5. While passing the detention order on 24.03.2023, the detaining authority had observed that, the detenu had filed bail application in Cr.No. 58 of 2023 before the Principal Sessions Court in Cr.M.P.No.3741 of 2023, in which application, bail was granted to the detenu on 23.03.2023, but the detenu has not produced sureties so far. With this observation, the detaining authority had inferred that the detenu is likely to come out on bail



by producing sureties. Such a subjective satisfaction is frowned upon in the case of *Selvakumar vs. The Secretary to Government, State of Tamil Nadu, Home, Prohibition and Excise Department, in H.C.P.(MD)No.948 of 2018, dated 05.07.2018*, in the following manner :-

"4. We fail to understand how the Detaining Authority can insist that the detenu to produce the sureties on the very date of the order of bail granted by this Court and how not doing so can be stated as a reason informing likelihood of the detenu being released on bail and therefore, the need for his detention.

5. The Detaining Authority is warned that his approach, besides being unjust, can very well be seen as contempt of Court. However, for the present, this Court would not make an issue of it, but, the Detaining Authority as also the Sponsoring Authority would, in future, act with due diligence and respect to the orders of this Court."

6. In view of the above Judgement, the subjective satisfaction, which the detaining authority had arrived at, cannot be sustained and the same is liable to be interfered with by this Court.



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7. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl. No.31/2023 dated 24.03.2023 passed by the second respondent is set aside. The detenu, viz., Petchimuthu aged about 23 years S/o.Paulpandi, 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.)
25.09.2023

NCC : Yes / No

Internet : Yes

RR

To

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

2.The Joint Secretary
Public Law and Order
Secretariat, Chennai.

3.The District Collector and District Magistrate
Tirunelveli District, Tirunelveli.

4.The Superintendent of Prison,
Central Prison, Palayamkottai
Tirunelveli District

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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