



HCP(MD)No.664 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.09.2023

CORAM

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

H.C.P.(MD)No.664 of 2023

Esakkimuthu

... Petitioner/ Detenu

Vs

1. The Additional Chief Secretary to Government,
State of Tamilnadu
Home, Prohibition and Excise Department,
Secretariat, Chennai 600009.
2. The District Collector and District Magistrate
of Dindigul District,
Office of the District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai, Tirunelveli District

... Respondents

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 of the respondent No.2 in Detention order H.S.(M) Confdl. No.43/2023 dated 09.03.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name



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Esakkimuthu son of Subramani, aged about 35 years now confining as Goonda at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Prakash

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., Esakkimuthu aged about 35 years, S/o.Subramani. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl. No.43/2023 dated 09.03.2023 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.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly



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focus his argument on the ground that the detaining authority, after being aware of the fact that though there is 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 filing bail application by relying upon the order passed in CrI.M.P.No.643/2018 dated 27.02.2018. The learned counsel therefore submitted that the order that was relied upon by the detaining authority is not similar, since in that case, bail was granted on the ground that the co-accused had already been released on bail and the injured has been discharged and hence, 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.

5. On carefully going through the detention order, the detaining authority was aware of the fact that there is no bail application filed by the detenu. However, the detaining authority took into consideration the order passed in CrI.M.P.No.643/2018 and came to the conclusion that there is a likelihood of the detenu coming out on bail by filing bail application.



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Perusal of the order shows that the accused therein was granted bail on the ground that the co-accused had been granted bail and injured in that case has been discharged 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.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M) Confdl. No.43/2023 dated 09.03.2023 passed by the second respondent is set aside. The detenu, viz., Esakkimuthu S/o.Subramani, aged about 35 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.)
19.09.2023

Internet : Yes
RR



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To

1. The Additional Chief Secretary to Government,
State of Tamilnadu
Home, Prohibition and Excise Department,
Secretariat, Chennai 600009.

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

3. The District Collector and District Magistrate
of Dindigul District,
Office of the District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.

4. The Superintendent of Prison,
Palayamkottai 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.

RR

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