



HCP(MD)No.750 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.09.2023

CORAM

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

H.C.P.(MD)No.750 of 2023

A.Durairaj

.. Petitioner / Father of the
detenu

Vs.

1.State of Tamil Nadu,
Rep. By the Principal 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.

.. Respondents

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



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detention order passed in M.H.S.Confdl No.198/2022, dated 31.10.2022 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Gladson Raj, aged about 31 years, S/o.Durairaj, 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.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz., Gladson Raj, aged about 31 years, S/o.Durairaj. The detenu has been detained by the second respondent by his order in M.H.S.Confdl No.198/2022, dated 31.10.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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.3200/2022, dated 17.10.2022. 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 his counter.

5. On carefully going through the detention order, the detaining authority was aware of the fact that no bail application was filed by the



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detenu. However, the detaining authority took into consideration the order passed in Cr.M.P.No.3200/2022, dated 17.10.2022 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 had already suffered 84 days incarceration and the offence involved is under Sections 7, 8, 9(m) and 10 of Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i) and 3(2)(va) of SC/ST (POA) Act. However, in the present case, the FIR was registered under Section 366 IPC and Section 5(1) r/w 6 and Section 13 of POCSO Act and Section 3(1)(w)(i) and 3(2)(va) of SC/ST (POA) Act 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 M.H.S.Confdl No.198/2022, dated 31.10.2022 passed by the second respondent is set aside. The detenu, viz., Gladson Raj, S/o.Durairaj,



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aged about 31 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.)
26.09.2023

NCC : Yes / No
Internet : Yes
vsm

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu
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.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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

vsm

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