



HCP(MD)No.888 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.07.2023

CORAM

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

H.C.P.(MD)No.888 of 2023

R.Santhi

.. Petitioner / Mother of the Detenu

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.

.. 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 M.H.S.Confdl No.199/2022, dated 01.11.2022



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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., Manickam alias Magesh, aged about 28 years, S/o.Rathinapandi, 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 mother of the detenu viz., Manickam alias Magesh, S/o.Rathinapandi, aged about 28 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No. 199/2022, dated 01.11.2022, 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.6220/2019 on 27.10.2019, relating to Crime No.124 of 2019, which is the second adverse case. The learned counsel for the petitioner therefore submitted that there is non application of mind on the part of the detaining authority.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition.

5. On carefully going through the detention order, it is seen that the detaining authority had recorded in the detention order that the detenue was



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earlier granted bail by the Judicial Magistrate, Srivaikundam in Cr.M.P.No. 6220 of 2019 on 27.10.2019, relating to Crime No.124 of 2019, which is the second adverse case. Thereafter, he had also recorded that the petitioner has not filed any bail application in the third adverse case relating to Crime No. 10 of 2021. With these observations, he had stated that there is a real possibility for the detenu to come out on bail in future by filing bail application in the fifth adverse case and the ground case. However, the fact remains that the petitioner had already come out on bail in the third adverse case relating to Crime No.10 of 2021, which is reflected in the charge sheet in page No.197 of the Booklet that the petitioner has come out on bail by orders of Court. Though the charge sheet form part of the booklet, the detaining authority has not properly applied his mind, while recording the contrary statement.

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 M.H.S.Confdl.No.199/2022, dated 01.11.2022, passed by the second respondent is set aside. The detenu, namely, Manickam alias Magesh, son of Rathinapandi, aged about 28 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.)
27.07.2023

NCC : Yes / No

Index : Yes / No

vsm

To

- 1.TheAdditional 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.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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