



HCP(MD)No.1436 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.07.2023

CORAM

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

H.C.P.(MD)No.1436 of 2022

Parthiban

.. Petitioner /detenu

Vs.

1.State of Tamil Nadu

Represented 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

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the detention order passed in M.H.S.Confdl.No.115/2022 dated 07.07.2022 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Parthiban, aged about 22 years, S/o.Subbaiah, 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 detenu viz., Parthiban aged about 22 years, S/o.Subbaiah. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.115/2022 dated 07.07.2022 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.906/2020. The learned counsel therefore submitted that the order that was relied upon by the detaining authority was not similar and the offence involved is under Sections 148, 294(b), 302, 506(2), 109 IPC r/w 3(2)(va) of SC/ST (POA) Amendment Act and Section 4 of Explosive Substance Act, 2014 and on that score, the detention order is liable to be interfered with.



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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 detenu. However, the detaining authority took into consideration the order passed in Cr.M.P.No.906/2020 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 final report has not been filed within the period stipulated either under Section 167(2) of CrPC, statutory bail was granted. However, in the present case, the FIR was registered for offences under Sections 294(b), 302 IPC and 3(2)(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) 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



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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.115/2022 dated 07.07.2022 passed by the second respondent is set aside. The detenu, viz., Parthiban S/o.Subbaiah, aged about 22 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.)
03.07.2023

NCC : Yes / No
Index : Yes / No
Lm/RR

To

1.The Additional Chief 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.

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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.

Lm/RR

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