



HCP(MD)No.1564 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.07.2023

CORAM

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

H.C.P.(MD)No.1564 of 2022

Muthukutty

.. Petitioner /Detenu

Vs.

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. 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 of the Respondent No.2 in H.S.(M) Confdl.No.172/2022 dated 19.08.2022 and quash the same and direct the respondents to produce the body or person of the detenu by name Muthukutty, son of Samydoss,



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aged about 44 years, now detained as “GOONDA” at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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., Muthukutty, aged about 44 years, S/o.Samydoss. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl.No.172/2022 dated 19.08.2022 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.

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. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his arguments on the following grounds:

(i) The detaining authority has arrived at a subjective satisfaction that the accused Muthukutty is trying to file a bail application before the appropriate Court in the ground case in Crime No.230/2022. However, in the materials supplied along with the order of detention, there are no materials available as to how the detaining authority has arrived at the subjective satisfaction that the detenu is taking steps to file bail application; and

(ii) The detaining authority has relied upon the order passed in CrI.O.P.(MD).No.23893/2016 dated 23.12.2016 and came to the conclusion that in a similar case bail has been granted and that there is likelihood of the detenu released on bail. The learned counsel for the petitioner therefore submitted that the order relied upon by the detaining authority is not similar and there is non application of mind on the part of the detaining authority.



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4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.

5. While arriving at a subjective satisfaction, the detaining authority has stated that the detenu is trying to file a bail application. However, in the materials supplied, there are no materials whatsoever to arrive at a subjective satisfaction that the detenu is taking steps to file a bail application. It is also seen that in the order that was relied upon by the detaining authority in CrI.O.P.(MD).No.23893/2016 dated 23.12.2016, the accused therein was enlarged on bail for the offences under Sections 294(b), 302 and 506(ii) IPC. However, in the present case, the offences involved are under Sections 450, 302, 506(ii) IPC @ 450, 302, 506(ii) and 109 IPC. Hence, the order that was relied upon by the detaining authority cannot be considered to be an order passed in a similar case. On these grounds, the order of detention is liable to be interfered with.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M) Confdl.No.172/2022 dated 19.08.2022 passed by the second respondent is set aside. The detenu, viz., Muthukutty,



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S/o.Samydoss, aged about 44 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.)
06.07.2023

NCC : Yes / No
Index : Yes / No
Lm

To

- 1.The Additional Chief Secretary to Government,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
M.NIRMAL KUMAR,J.

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