



HCP(MD)No.1655 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2023

CORAM

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

H.C.P.(MD)No.1655 of 2022

Thirupathi Pandian

.. Petitioner /father
of the detenu

Vs.

1.The State of Tamil Nadu
rep. by its Additional Chief Secretary to Government
Home Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Collector and District Magistrate
Thoothukudi District, Thoothukudi.

3.The Superintendent of Prison
Central Prison, Palayamkottai

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner's son namely Muthuselvam, S/o.Thirupathi Pandian aged about 24 years vide detention order dated 11.08.2022 in No.H.S.(M)Confdl. No.165/2022 passed by the 2nd respondent and quash the same and consequently direct the respondents to produce the body or person of the detenu now detained at Central prison, Palayamkottai, before this Court and



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set him at liberty.

For Petitioner : Mr.S.Vishnuvardhanan
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz.,Muthuselvam , aged about 24 years, S/o.Thirupathi Pandian. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl. No.165/2022 dated 11.08.2022 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.

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 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 CrI.O.P.No.23893/2016 on 23.12.2016. The learned counsel therefore submitted that the order that was relied upon by the detaining authority was not a similar and the accused therein was enlarged on bail on the ground that investigation has been completed and charge sheet has been filed in the said case 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 detenu. However, the detaining authority took into consideration the order passed in CrI.O.P.No.23893/2016 dated 23.12.2016 and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that the charge sheet has been filed in the said



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case. However, in the present case, the investigation is still pending 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.165/2022 dated 11.08.2022 passed by the second respondent is set aside. The detenu, viz., Muthuselvam S/o.Thirupathi Pandian, aged about 24 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.)
05.07.2023

Internet : Yes
RR



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To

1. The Additional Chief Secretary to Government
Home Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate
Thoothukudi District, Thoothukudi.
3. The Superintendent
Central Prison, Palayamkottai
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.

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