



H.C.P(MD)No.1723 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2023

CORAM :

THE HONOURABLE MR JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

H.C.P(MD)No.1723 of 2022

Beer Mohamed

.. Petitioner

vs.

1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records pertaining to the impugned detention order passed by the second respondent in proceedings in C.No.118/Detention/C.P.O/T.C/2022 dated 29.08.2022 in detaining the detenu under Section 2 (f) of the Tamil Nadu Act 14/1982 as a Goonda and



quash the same and direct the respondents to produce the detenu namely Babu @ Mittai Babu, S/o.Mohamed Ushen, aged about 28 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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 brother of the detenu viz., Babu @ Mittai Babu, S/o.Mohamed Ushen, aged about 28 years. The detenu has been detained by the second respondent by order in C.No.118/Detention/C.P.O/T.C/2022 dated 29.08.2022 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 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 Crl.M.P.No.567 of 2021 dated 26.08.2021. The learned counsel for the petitioner therefore submitted that the order relied upon by the detaining authority is 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 counter.

5. On carefully going through the detention order, it is seen that in the order that was relied upon by the detaining authority in Crl.M.P.No. 567/2021 dated 26.08.2021, the accused therein was enlarged on bail since co-accused was released on bail. However, in the present case, the co-accused are still in jail. Hence, the order that was relied upon by the



detaining authority cannot be considered to be an order passed in a similar case.

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 C.No.118/Detention/C.P.O/T.C/2022 dated 29.08.2022 passed by the second respondent is set aside. The detenu, viz., Babu @ Mittai Babu, S/o.Mohamed Ushen, 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.)

07.07.2023

NCC : Yes/No
Index : Yes/No
Speaking/Non-speaking order

mbi



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To

WEB COPY

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- 3.The Superintendent of Prison,
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Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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