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HCP(MD)No.1819 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2023

CORAM

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

H.C.P.(MD)No.1819 of 2022

Rathinapandi

.. Petitioner/ Father of the Detenu

Vs.

1.The State of Tamil Nadu

Represented 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,
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 leading to the detention of the petitioner's son namely Gunasekaran @ Guna, S/o.Rathinapandi, aged about 28 years vide detention order dated 25.07.2022 made in No.H.S.(M)Confdl.No.147/2022 passed by the 2nd



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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 set him at liberty.

For Petitioner : Mr.S.Vishnuvardhan

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., Gunasekaran @ Guna, aged about 28 years, S/o.Rathinapandi. The detenu has been detained by the second respondent by his order in H.S.(M)Confdl.No.147/2022 dated 25.07.2022 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.

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 Gunasekaran @ Guna has tried to file a bail application before the appropriate Court in the ground case in Crime No.168/2022. 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 has tried 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, since the investigation was over, bail was granted. However, in the present case, investigation is pending. 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.147/2022 dated 25.07.2022 passed by the second respondent is set aside. The detenu, viz., Gunasekaran @ Guna,



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S/o.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.)
04.07.2023

NCC : Yes / No
Index : Yes / No
Lm

To

- 1.The Additional Chief Secretary to Government,
The State of Tamil Nadu,
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,
Tirunelveli District.
- 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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