



HCP(MD)No.1855 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.07.2023

CORAM

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

H.C.P.(MD)No.1855 of 2022

R.Kaliyamoorthy

.. Petitioner /Father of the Detenu

Vs.

1.Government of Tamil Nadu

represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate's Office,
Thanjavur District,
Thanjavur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

.. 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 second respondent in Detention Order P.D.No.124/2022 on 11.09.2022 and detained at Central Prison,



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Tiruchirappalli and quash the same and direct the respondents to produce the body or person of petitioner's son namely Karthik Male aged about 26/2022 son of Kaliyamoorthy now confined at Central Prison, Tiruchirappalli and set him at liberty forthwith.

For Petitioner : Mr.B.Jameelarasu

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., Karthik, aged about 26 years, S/o.Kaliyamoorthy. The detenu has been detained by the second respondent by his order in P.D.No.124/2022 dated 11.09.2022 holding him to be a "Boot-Legger", as contemplated under Section 2(b) 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 argument on the ground that the detaining authority has relied upon the order passed in Crl.M.P.No.4973/2013 dated 17.12.2013 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 submitted that the detaining authority was aware of the fact that the detenu filed bail application in the ground case and the same is pending. 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.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his 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.4973/2013 dated 17.12.2013, the accused therein was enlarged



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on bail for the offences under Sections 4(1)(aaa), 4(1)(i) and 4(1-A) of Tamil Nadu Prohibition Act, 1937. However, in the present case, the offences involved are under Sections 4(1)(aaa) r/w 4(1-A) of Tamil Nadu Prohibition Act, 1937 and 420, 465, 468, 471, 272 of IPC. 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 P.D.No.124/2022 dated 11.09.2022 passed by the second respondent is set aside. The detenu, viz., Karthik, S/o.Kaliyamoorthy, aged about 26 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.)
11.07.2023

NCC : Yes / No
Index : Yes / No
Lm/mbi



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Madurai Bench of Madras High Court,
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and
M.NIRMAL KUMAR,J.

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