



HCP(MD)No.1877 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.1877 of 2022

Nithya

.. Petitioner /Wife of the Detenu

Vs.

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

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to



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issue a writ of Habeas Corpus, calling for the entire records in pertaining to the Detention Order in H.S.(M) Confdl No.171/2022 dated 19.08.2022 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of petitioner's husband namely Prabakaran, S/o.Thirumalkaran, aged about 30 years, who is detained in Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.T.Vadivelan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz., Prabakaran, aged about 30 years, S/o.Thirumalkaran. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl.No.171/2022 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.



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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 has relied upon the order passed in Cr.M.P.No.429/2018 dated 02.02.2018 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 was dismissed. However, he came to the conclusion that there is every possibility of the detenu coming out on bail by filing another bail application. 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. On carefully going through the detention order, it is seen that in the order that was relied upon by the detaining authority in Cr.M.P.No.429/2018 dated 02.02.2018, the accused therein was granted bail for the offences under Sections 294(b), 392 and 506(2) IPC. However, in the present case, the offence involved is under Section 392 IPC and the accused herein was involved in five previous cases, which was not referred to in the similar case. 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.



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7. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M) Confdl.No.171/2022 dated 19.08.2022 passed by the second respondent is set aside. The detenu, viz., Prabakaran, S/o.Thirumalkaran, aged about 30 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,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Thoothukudi District,
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3. The Superintendent,
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Tirunelveli.

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.

Lm

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