



HCP(MD)No.1864 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.09.2023

CORAM

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

H.C.P.(MD)No.1864 of 2022

S.Muthuvel (Father of the Detenu)

.. Petitioner

Vs.

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

2.The District Collector and the District Magistrate,
Virudhunagar District,
Virudhunagar.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made in her proceedings in Preventive Detention Order No.Cr.M.P.No.34/2022 dated



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30.09.2022 by detain the detenu under Section 2(ggg) of the Tamil Nadu Act 14/1982 as a Sexual Offender and quash the same and direct the respondents to produce the detenu namely Borali @ Prabhakaran, S/o.Muthuvel, aged about 26 years, who is detained in Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.S.Poornachandran

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., Borali @ Prabakaran, aged about 26 years, S/o.Muthuvel. The detenu has been detained by the second respondent by his order in Cr.M.P.No.34/2022 dated 30.09.2022 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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, no reference has been made to the detenu's involvement in Crime No.181/2022, which is the adverse case and his likelihood of coming out on bail in the said case. Hence, the subjective satisfaction arrived at by the detaining authority suffers from non-application of mind.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter. It is further submitted that investigation has been completed in this case and final report has been filed in S.C.No.214/2022 and the same is pending before the Mahila Court, Srivilliputtur.



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5. In paragraph No.5 of the detention order, the detaining authority has made a reference to the adverse case in Crime No.181/2022 as well as the ground case in Crime No.123/2022 and by quoting the bail order passed in the case of the co-accused in Cr.M.P.No.2901/2022 dated 23.09.2022 in Crime No.123/2022, the detaining authority has arrived at a subjective satisfaction that the detenu is likely to come out on bail by filing another bail application. However, no reference has been made to the detenu's involvement in Crime No.181/2022, which is the adverse case and his likelihood of coming out on bail in the said case. Thus, the subjective satisfaction arrived at by the detaining authority would amount to non-application of mind. Hence, the impugned order of detention is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.34/2022 dated 30.09.2022 passed by the second respondent is set aside. The detenu, viz., Borali @ Prabakaran,



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S/o.Muthuvel, 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.)
20.09.2023

NCC : Yes / No
Index : Yes / No
Lm

To

- 1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and the District Magistrate,
Virudhunagar District,
Virudhunagar.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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M.NIRMAL KUMAR,J.

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