



HCP(MD)No.2112 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.07.2023

CORAM

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

H.C.P.(MD)No.2112 of 2022

Kalyani

.. Petitioner / mother of
the detenu

Vs.

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

2.The District Collector and District Magistrate
O/o. The District Collector
Thanjavur District, Thanjavur.

3.The Superintendent of Prison,
Central Prison
Tiruchirappalli

4.The Inspector of Police
Kailaperumbur Police Station,
Thanjavur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records pertaining to detention



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order dated 19.11.2022 passed by the 2nd respondent in P.D.No.156/2022 and quash the same as illegal and further direct the respondents herein to produce the body or person of the detenu namely Hariharan, S/o.Sakthivel, aged about 25 years, now detained at Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.C.Senthilmurugan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the mother of the detenu viz., Hariharan aged about 25 years, S/o.Sakthivel. The detenu has been detained by the second respondent by his order in P.D.No.156/2022 dated 19.11.2022 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 CrI.M.P.No.656/2017. The learned counsel therefore submitted that the similar case that was relied upon by the detaining authority was not a similar one 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 his counter.

5. On carefully going through the detention order, the detaining authority was aware of the fact that no bail application was filed by the detenu. However, the detaining authority took into consideration the order passed in CrI.M.P.No.656/2017 dated 20.03.2017 and came to the conclusion that there is a likelihood of the detenu coming out on bail. Perusal of the order shows that the accused therein had been granted the



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relief of bail on the ground that the investigation is almost over and the offence therein was under Section 3(1)(x) of the SC/ST (PoA) Act among other offences. However, in the present case, the offence is under Section 3(2)(v) of the SC/ST (PoA) Act and hence, the bail order that was relied upon by the detaining authority cannot be considered to be a similar one.

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.156/2022 dated 19.11.2022 passed by the second respondent is set aside. The detenu, viz., Hariharan S/o.Sakthivel, aged about 25 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.)
20.07.2023

Internet : Yes
RR



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To

1. The Additional Chief Secretary to Government
Home Prohibition and Excise Department,
State of Tamil Nadu
Fort St. George, Chennai-600 009.
2. The Joint Secretary to the Government
Public Law and Order
Fort St. George, Chennai 09.
3. The District Collector and District Magistrate
O/o. The District Collector
Thanjavur District, Thanjavur.
4. The Superintendent of Prison,
Central Prison
Tiruchirappalli
5. The Inspector of Police
Kailaperumbur Police Station,
Thanjavur District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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and
M.NIRMAL KUMAR,J.

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