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H.C.P.(MD) No.1441 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

H.C.P.(MD) No.1441 of 2023

T.Bharath

... Petitioner

-vs-

1.State of Tamil Nadu
rep.by its Principal Secretary to Government
Government of Tamil Nadu
Home, Prohibition & Excise Department
Chennai-9

2.The Commissioner of Police
Madurai City, Madurai

3.The Superintendent
Central Prison, Madurai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records in detention order No. 65/BCDFGISSSV/2023, dated 21.07.2023, on the file of the second respondent and quash the same and direct the respondents herein to produce the body of the petitioner's brother, namely, Pavithran @ Pavi, son of Thangapandian, aged about 29 years, now confined in Central Prison, Madurai, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.R.Alagumani
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the brother of the detenu viz., Pavithran @ Pavi, son of Thangapandian, aged about 29 years. The detenu has been detained by the second respondent by his order No.65/BCDFGISSSV/2023, dated 21.07.2023, 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 points have been raised by the learned counsel for the petitioner, it is stated that the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority, while passing the impugned detention order. According to the



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learned counsel for the petitioner, the Sponsoring Authority has sworn in the affidavit on 20.07.2023, in which he has referred to the bail application of the detenu filed before the Principal District and Sessions Court, Madurai in CrI.M.P.No.4127 of 2023. Whereas, as per the document placed at Page No. 130, the bail application filed by the detenu is dated 21.07.2023. In such circumstances, the Detaining Authority, without calling for clarification or a special report from the Sponsoring Authority, has passed the impugned detention order, which shows non-application of mind on the part of the Detaining Authority while passing the impugned detention order. On that score alone, the impugned detention order is liable to be set aside.

4. Learned Additional Public Prosecutor appearing for the respondents strongly opposed the habeas corpus petition by filing his counter. He would submit that the date has been wrongly mentioned, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and therefore prays for dismissal of the habeas corpus petition

5. On a perusal of the booklet, it is seen that the Sponsoring Authority has sworn in the affidavit on 20.07.2023, in which he has referred



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to the bail application filed by the detenu before the Principal District and Sessions Court, Madurai in CrI.M.P.No.4127 of 2023. However, as per the document available at Page No.130 of the booklet, the bail application filed by the detenu is dated 21.07.2023. Hence, the Detaining Authority, without calling for clarification or a special report from the Sponsoring Authority, has passed the impugned detention order, which shows non-application of mind on the part of the Detaining Authority while passing the impugned detention order, thereby the impugned detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention No.65/BCDFGISSSV/2023, dated 21.07.2023, passed by the second respondent is set aside. The detenu, viz., Pavithran @ Pavi, son of Thangapandian, aged about 29 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[A.D.J.C., J.] [K.R.S., J.]

03.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

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Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai-9.
- 2.The Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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AND
K.RAJASEKAR, J.
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