



WEB COPY



HCP No.911 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

HCP No.911 of 2022

Sebiya Ummar
M/o.Sameer Kottakal Umar

.. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by the Secretary to the Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai City
Vepery, Chennai – 600 007.

3.The Inspector of Police,
Team 17 Anti Land Grabbing Special-I,
Central Crime Branch,
Vepery, Chennai – 600 007.

4. The Superintendent of Prison,
Central Prison Puzhal,
Chennai.

...Respondents



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Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the records pertaining to the Memo No.94/BCDFGISSSV/2022 dated 02.05.2022 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the petitioner's son Sameer Kottakal Umar, S/o. Umar Kunju, aged 41 years, now confined in the Central Prison, Puzhal, Chennai before the Court and set him at liberty.

For Petitioner : Mr.M.Jothikumar

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by **N.ANAND VENKATESH, J.**]

The petitioner is the mother of the detenu *viz.*, Sameer Kottakal Umar S/o.Umar Kunju, aged 41 years. The detenu has been detained by the second respondent by his order in 94/BCDFGISSSV/2022 dated 02.05.2022, 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. The main ground that was urged by the learned counsel for the petitioner is that the detaining authority after being aware of the fact that the bail petition filed by the detenu was dismissed, had come to the conclusion that there is likelihood of the detenu coming out on bail by relying upon the order passed in CrI.M.P.No.4897 of 2019. The learned counsel further submitted that the order that was relied upon by the detaining authority is not a similar case. Hence, it was submitted that the detention order suffers from non-application of mind.

4. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.

5. We have carefully perused the order passed in CrI.M.P.No.4897 of 2019. In that case, the bail was granted to the accused therein on the ground



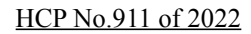
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that the accused had merely introduced the defacto complainant to A1 and there was no other overt act attributed against the accused. That apart, the Court also took into consideration the long incarceration suffered by the accused therein. In the present case, the detenu was directly involved in the offence and his bail applications were also dismissed twice. Hence, the order relied upon the detaining authority cannot be considered to be a similar case. This clearly shows non-application of mind on the part of the detaining authority.

In the result, the Habeas Corpus Petition is allowed and the order of detention in 94/BCDFGISSSV/2022 dated 02.05.2022 passed by the second respondent is set aside. The detenu, viz., Sameer Kottakal Umar S/o. Umar Kunju, aged 41 years, is directed to be released forthwith unless his detention is required in connection with any other case.

[P.N.P., J] [N.A.V., J]
20.12.2022

Index: Yes/No
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