



HCP.No.780/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.780/2023

M.Saravanan

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Petitioner

Versus

1.The Principal Secretary to the Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. Georget, Chennai – 9.

2.The Commissioner of Police/Detaining Authority,
Coimbatore City.

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

4.The Inspector of Police,
All Women Police Station West,
Coimbatore City.

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Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records in



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C.No.31/G/IS/2023 on the file of the second respondent, set aside the detention order dated 16.03.2023 and direct the second respondent to produce the M.Shanmugam son of Maruthachalam, aged about 47 years, presently detained at the Central Prison, Coimbatore under the Tamil Nadu Act 14 of 1982 as a Sexual Offender, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.Balasubramaniam
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(Order of the Court was made by SUNDER MOHAN, J.)

(1)The petitioner, brother of the detenu Shanmugam, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 16.03.2023 slapped on his brother, branding him as "Sexual Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

(2)Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



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(3) Though several points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail suffers from non application of mind.

(4) In paragraph No.8 of the Grounds of Detention, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail since in a similar case, bail was granted to the accused therein by the Special Court and relied upon an order passed in CMP.No.260/2020 on 04.06.2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offences Act, Coimbatore, in Crime No.4/2020 for the offences u/s.5[m], 5[l] read with 6 of the Protection of Children from Sexual Offences Act. The said bail order is found in page No.95 of the Booklet furnished to the detenu. On a perusal of the said order, this Court finds that the said order relates to release of the accused on bail u/s.167[2] of Cr.P.C., and not on merits. Therefore, it is not a similar case and the subjective satisfaction of the Detaining Authority, regarding the possibility of the detenu coming out



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on bail suffers from non-application of mind, which vitiates the detention order.

(5)In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 16.03.2023 in C.No.31/G/IS/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Shanmugam, S/o.Maruthachalam, aged 47 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SMJ]
03.10.2023

AP

To

- 1.The Principal Secretary to the Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. Georget, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,
Coimbatore City.
- 3.The Superintendent of Prison,
Central Prison, Coimbatore.
- 4.The Inspector of Police,
All Women Police Station West, Coimbatore City.
- 5.The Public Prosecutor
High Court, Madras.



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S.S.SUNDAR, J.,

AND

SUNDER MOHAN, J.,

AP

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