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HCP.Nos.999, 996, 920, 1032 & 1115/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

HCP.Nos.999, 996, 920, 1032 & 1115/2023

Muthuselvi

... Petitioner in HCP.No.999/2023

Sudha

... Petitioner in
HCP.No.996/2023

M.Jaya

... Petitioner in
HCP.No.920/2023

Selvaindira

... Petitioner in
HCP.No.1032/2023

Sudalaikannu

... Petitioner in
HCP.No.1115/2023

Vs.

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

2.The Commissioner of Police
Greater Chennai, O/o.The Commissioner
of Police, Vepery, Chennai 600 007.



HCP.Nos.999, 996, 920, 1032 & 1115/2023

3.The Inspector of Police
K8, Arumbakkam Police Station
Chennai.

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

... Respondents in
HCP.Nos.999, 996 & 1032/2023

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

2.The Commissioner of Police
Greater Chennai, O/o.The Commissioner
of Police, Vepery, Chennai 600 007.

3.The Superintendent of Prison
Central Prison-II, Puzhal,
Chennai.

4.The Inspector of Police
K8, Arumbakkam Police Station
Chennai.

... Respondents in
HCP.Nos.920 & 1115/2023

Prayer in HCP.No.999/2023 : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records relating to the detention order passed by the 2nd respondent pertaining to the order made in No.120/BCDFGISSSV/2023 dated 21.04.2023 in detain the detenu under 2[F] of Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu Duraipandian, son of Karunyabalu, aged about 38 years, who is detained at Central Prison-II, Puzbal, Chennai before this Court and set him at liberty.

Prayer in HCP.No.996/2023 : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the



HCP.Nos.999, 996, 920, 1032 & 1115/2023

records relating to the detention order passed by the 2nd respondent pertaining to the order made in No.121/BCDFGISSSV/2023 dated 21.04.2023 in detain the detenu under 2[F] of Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu Manikanan, son of Mariyappan, aged about 38 years, who is detained at Central Prison-II, Puzbal, Chennai before this Court and set him at liberty.

Prayer in HCP.No.920/2023 : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records in detention order passed in No.122/BCDFGISSSV/2023 dated 21.04.2023 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the petitioner husband of Thiru Manikandan, son of Palani, the detenu herein now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

Prayer in HCP.No.1032/2023 : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records in detention order passed in No.123/BCDFGISSSV/2023 dated 21.04.2023 in detain the detenu under 2[F] of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondent to produce the detenu Ramesh, son of Palavesam, aged about 31 years who is detained at Central Prison-II, Puzhal, Chennai before this Court and set im at liberty.

Prayer in HCP.No.1115/2023 : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the entire records connected with the order of the 2nd respondent herein made in No.124/BCDFGISSSV/2023 dated 21.04.2023 against the detenu namely Semandurai @ Duraisingam aged about 38 years who is confined at Central Prison, Puzhal, and set aside the same, consequently, directing the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner in
HCP.No.999/2023 : Mr.P.Ramamoorthi

For Petitioner in
HCP No.996/2023 : Mr.K.Backiyaraj



HCP.Nos.999, 996, 920, 1032 & 1115/2023

For Petitioner in
HCP No.920/2023 : Mr.M.Anandaraj
For Petitioner in
HCP No.1032/2023 : Mr.P.Ramamoorthi
For Petitioner in
HCP No.1115/2023 : Mr.Senthil Kumar
For Respondents in
all the Petitions : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.Aravind. C

COMMON ORDER

[Order of the Court was made by S.S.SUNDAR, J]

- (1) Since the issue involved and the points for consideration raised in all the above Habeas Corpus Petition are one and the same, the petitions are taken up together for hearing and are disposed of by this common order.
- (2) The respective petitioners in the above Habeas Corpus Petitions, have come forward with these petitions challenging the detention orders passed by the 2nd respondent dated 21.04.2023 slapped on the detenus, branding them as "Goondas" under the Tamil Nadu Act 14 of 1982.
- (3) Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondents.
- (4) Though several grounds have been raised by the learned counsel for the petitioners, one of the common grounds raised is that in all these cases,



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the Detention Orders were passed on 21.04.2023 pursuant to the proposals that were sent on 20.04.2023. The learned counsel for the petitioners submitted that in each case, the Booklet shows several documents and statements, were relied upon by the Detaining Authority to clamp the Detention Orders on the detenus. It is contended that it is practically impossible for the Detaining Authority to consider all the relevant documents in all the five cases in one day and to pass orders of detention, applying mind. The learned counsel relied upon the judgment of this Court in ***Parapatty Suresh @ Suresh Kumar Vs. The Commissioner of Police, Salem City Police*** reported in **2013 [1] MWN [Crl] 1**.

(5) Though the facts in the present cases are slightly different, the principle that was followed by the Division Bench of this Court in the case above referred to, can be extended to the present cases because of the following reasons.

(6) In all the five Habeas Corpus Petitions, the Orders of Detention were passed on 21.04.2023 based on the proposals that were submitted on 20.04.2023, one day prior to the date of passing of the Detention Orders.



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It is practically impossible for the Detaining Authority to consider or read more than 125 pages in each of the Booklet to arrive at the subjective satisfaction. Since the orders of detention are passed within short span of time, that too, after the bail was refused to the detenus, the subjective satisfaction suffers from non application of mind.

(7)The Hon'ble Supreme Court, in the case of ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in ***2011 [5] SCC 244***, has dealt with a situation where the Detention Order is passed without an application of mind. In case any of the reasons stated in the order of detention is non-existent or a material information is wrongly assumed, that will vitiate the Detention Order. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble Supreme Court held that the order of detention is liable to be quashed. It is relevant to extract paragraphs No.10 and 11 of the said judgment of the Hon'ble Supreme Court:-

"10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail



application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

11. *In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail*



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HCP.Nos.999, 996, 920, 1032 & 1115/2023

*and there was no reliable material to this effect. Hence,
the detention order in question cannot be sustained."*

(8)The Detaining Authority, in all the above cases, has not relied upon any similar case to come to the conclusion that the detenus are likely to be released on bail. The fact that the bail applications filed by the detenus in the ground case in Cr.No.45/2023 were dismissed, was also recorded by the Detaining Authority in each of the Grounds of Detention. However, he has observed that there is a possibility of the detenus coming out on bail by filing another bail applications before the appropriate Court. This is not based on any material that was relied upon by the Detaining Authority. It is a mere *ipse dixit* of the Detaining Authority.

(9)In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment and in view of circumstances indicated above, this Court is of the view that the detention orders are liable to be quashed.

(10)Accordingly, the respective Detention Orders passed by the 2nd respondent dated 21.04.2023 in No.120/BCDFGISSSV/2023, No.121/BCDFGISSSV/2023, No.122/BCDFGISSSV/2023, No.123/BCDFGISSSV/2023 and No.124/BCDFGISSSV/2023, are



HCP.Nos.999, 996, 920, 1032 & 1115/2023

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hereby set aside and the Habeas Corpus Petitions are allowed. The
detenus are directed to be set at liberty forthwith unless they are required
in connection with any other case.

[SSSRJ] [SMJ]
03.11.2023

AP

Internet : Yes

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Fort St George, Chennai – 600 009.
- 2.The Commissioner of Police
Greater Chennai, O/o.The Commissioner
of Police, Vepery, Chennai 600 007.
- 3.The Inspector of Police
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- 5.The Public Prosecutor,
High Court, Madras.



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S.S. SUNDAR, J.,

and

SUNDER MOHAN, J.,

AP

HCP. Nos.999, 996, 920, 1032 & 1115/2023

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