



HCP.No.1027/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1027/2023

Hemalatha

..

Petitioner

Versus

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

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

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

4.The Inspector of Police
J9 Thuraipakkam Police Station
Chennai.

..

Respondents



HCP.No.1027/2023

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the entire records leading to the detention of the petitioner's husband Kicha @ Krishnamurthy son of Suburayan, Male, aged about 34 years, is presently lodged in Central Prison, Puzhal at Chennai, and has been detained under Act 14/1982 as a "Goonda" vide detention order dated 15.05.2023 made in Memo No.161/BCDFGISSSV/2023 by the 2nd respondent, the Commissioner of Police, Greater Chennai, Vepery, Chennai 600 007, quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Puzhal at Chennai.

For Petitioner : Mr.M.Rajavelu
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

(1)The petitioner, wife of the detenu Kicha @ Krishnamurthy, aged 34 years, S/o.Suubburayan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 15.05.2023 slapped on her husband, branding him as "Goonda" 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].



HCP.No.1027/2023

WEB COPY

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

(3) Though several grounds are raised in the petition, the learned counsel for the petitioner raised the following two grounds. Firstly, the inordinate and unexplained delay in passing the Detention Order and secondly, the bail order in the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail, was obtained during COVID-19 situation. In the present case, though the detenu was arrested on 10.04.2023, the Detention Order was passed only on 15.05.2023.

(4) The Hon'ble Supreme Court in the case of ***Sushantha Kumar Banik Vs. State of Tripura and Others*** reported in ***AIR 2022 SC 4715***, has dealt with similar situation and has held in paragraph No.21 as follows:-

"In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the



WEB COPY



HCP.No.1027/2023

detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.”

(5)The Hon'ble Supreme Court was persuaded to allow the Appeal filed before it mainly on the ground that delay in passing the Order of Detention from the date of the proposal would snap the "live and proximate link" between prejudicial activities and the purpose of detention. Therefore, failure on the part of the Detaining Authority in explaining such delay as in the present case also is a valid ground for quashing the Detention Order.

(6)Further, a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail in a similar case in CrI.MP.No.377/2023 passed by the learned Principal District and Sessions Judge, Chengalpattu. However, it is seen that the bail order in the similar case was obtained during COVID-19 situation and the bail was granted with a specific reference to COVID-19. It is in the said circumstances, this Court finds that the subjective satisfaction suffers



HCP.No.1027/2023

WEB COPY

from non-application of mind on the part of the Detaining Authority.

(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. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail by referring to a bail order granted in similar case in CrI.MP.No.377/2023. From the reading of the said bail order it is seen that the bail was granted only by taking note of COVID-19 situation and therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. Hence, on the above grounds, the Detention Order is liable to be quashed.

(8) In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 15.05.2023 in BCDFGISSSV No.161/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Kicha



HCP.No.1027/2023

WEB COPY

@ Krishnamurthy, S/o.Subburayan, aged 34 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[S.S.S.R., J.] [S.M, J.]
11.10.2023

AP
To

- 1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai, Vepery
Chennai 600 007.
- 3.The Superintendent of Prison
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police
J9 Thuraipakkam Police Station
Chennai.
- 5.The Public Prosecutor
High Court, Madras.



WEB COPY



HCP.No.1027/2023

S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

AP

H.C.P.No.1027/2023

11.10.2023