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HCP.No.1042/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.10.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1042/2023

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Petitioner

Versus

- 1.The Secretary to Government,
Home, Prohibition and Excise [XVI] Department
Secretariat, Chennai 600 009.
- 2.The District Collector & District Magistrate
O/o.The District Collector, Thiruvarur District.
- 3.The Superintendent of Police
O/o.Superintendent of Police
Thiruvarur District.
- 4.The Superintendent of Prison
Central Prison, Trichy
Trichy.
- 5.The Inspector of Police
Peralam petitioner s
Peralam, Thiruvarur District.

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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 entire records



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connected with the detention order in COC.No.41/2023 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of petitioner son one named Vishva S/o.Kalaivanan aged about 29 years now confined at Central Prison, Trichy before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizhselvakumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

- (1)The petitioner, mother of the detenu Vishva, aged 29 years, S/o.Kalaivanan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 20.05.2023 slapped on her son, 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].
- (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 grounds are raised in the petition, the learned counsel for the petitioner submitted that the order of detention is vitiated on the ground of non-application of mind as it is seen from the booklet that, in stead of furnishing the bail order pertaining to a similar case relied on by the Detaining Authority, the order relaxing the conditions imposed while granting bail, is furnished.

(4) A perusal of the Grounds of Detention reveals that the Detaining Authority had relied upon the order of bail in a similar case in CrI.OP.No.9350/2021 passed by this Court. However, it is seen in page No.97 of the Booklet that the Detaining Authority has given the copy of the order relaxing the conditions imposed while granting bail to the accused in the similar case in stead of furnishing the bail order in the similar case. The particulars for granting bail is not seen in the Booklet.

(5) 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



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wrongly assumed, that will vitiate the Detention Order. It is in the said circumstances, this Court finds that in the instant case, the subjective satisfaction suffers from non-application of mind on the part of the Detaining Authority. Hence, on this sole ground, the Detention Order is liable to be quashed.

(6) In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 20.05.2023 in COC.No.41/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Vishva, S/o.Kaliavanan, aged 22 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.]
13.10.2023

AP



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To

- 1.The Secretary to Government,
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Peralam, Thiruvarur District.
- 6.The Public Prosecutor
High Court, Madras.



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

AP

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