



HCP.No.1074/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1074/2023

Mrs.P.Mageswari

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Petitioner

Versus

1.The State of Tamil Nadu rep.by
its Additional Chief 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
Central Prison, Puzhal, Chennai.

4.The Inspector of Police
H8, Thiruvottiyur Police Station
Chennai.

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Respondents



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Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records of the 2nd respondent herein pertaining to the detention order made in BCDFGISSSV NO.198/2023 dated 30.05.2023 and quash the same and direct the respondents to produce the body of the detenu namely Barath, aged about 22 years, now detained in Central Prison, Puzhal, Chennai before this Court and set the detenu at liberty forth with.

For Petitioner : Mr.V.Saravanan

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 Barath, aged 22 years, S/o.Parthiban, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 30.05.2023 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].



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(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 24.04.2023, the Detention Order was passed only on 30.05.2023.

(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 detenu. More



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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.10485/2021 passed by the learned Principal Sessions Judge, Chennai. 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. Is is in the said circumstances, this Court finds that the subjective satisfaction suffers from non-application



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of mind on the part of the Detaining Authority. Hence, on the above grounds, the Detention Order is liable to be quashed.

(7) In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 30.05.2023 in BCDFGISSSV No.198/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Barath, S/o.Parthiban, 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.]
09.10.2023

AP

To

- 1.The Additional Chief 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.
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- 5.The Public Prosecutor
High Court, Madras.



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

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