



WEB COPY



HCP.No.1091/2023

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.1091/2023

Simran

..

Petitioner

Versus

1.The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The District Collector & District Magistrate
O/o.The District Collector & District Magistrate
Nagapattinam District.

3.The Superintendent of Police
Nagapattinam District.

4.The Superintendent of Prison
Central Prison, Trichirappalli.

5.The Inspector of Police
Velipalayam Police Station,
Nagapattinam District.

..

Respondents



HCP.No.1091/2023

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 connected with the detention order in COC.No.20/2023 dated 05.05.2023 on the file of the respondent No.2, quash the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Appu @ Jayakumar, aged about 25 years son of Maharajan now confined at Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

For Petitioner : Mr.U.Kathiravan

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 Appu @ Jayakumar, aged 25 years, S/o.Maharajan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 05.05.2023 slapped on her son, branding him as "Bootlegger" 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.1091/2023

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 where the learned Public Prosecutor had not objected for grant of bail to the accused therein. In the present case, though the detenu was arrested on 11.04.2023, the Detention Order was passed only on 05.05.2023.

(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



HCP.No.1091/2023

link” between the grounds of detention and the purpose of detention stood snapped in arresting the 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 passed in a similar case in CrI.MP.No.886/2023 by the learned Principal District and Sessions Judge, Nagapattinam, to arrive at the subjective satisfaction that



HCP.No.1091/2023

WEB COPY

the detenu is likely to be released on bail. However, bail was granted to the accused in the similar case in CrI.MP.No.886/2023 as there was no objection on the side of the prosecution to release the accused therein on bail. It is also admitted that there are three adverse cases against the detenu herein and therefore, it is not likely that the detenu will also be released on bail. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind. 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 05.05.2023 in COC.No.20/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Appu @ Jayakumar, S/o.Maharajan, aged 25 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



WEB COPY



HCP.No.1091/2023

To

- 1.The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The District Collector & District Magistrate
O/o.The District Collector & District Magistrate
Nagapattinam District.
- 3.The Superintendent of Police
Nagapattinam District.
- 4.The Superintendent of Prison
Central Prison, Trichirappalli.
- 5.The Inspector of Police
Velipalayam Police Station,
Nagapattinam District.
- 6.The Public Prosecutor
High Court, Madras.



WEB COPY



HCP.No.1091/2023

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

AP

H.C.P.No.1091/2023

09.10.2023