



HCP.No.1294/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1294/2023

Anbalagan

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St. George, Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector, Coimbatore.
- 3.The Superintendent of Police,
Office of the Superintendent of Police, Coimbatore.
- 4.The Superintendent of Prison,
Central Prison at Coimbatore.
- 5.The Inspector of Police,
Periyanaicken Palaiyam Prohibition, Enforcement Wing,
Coimbatore.

... 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 entire records in Detention order in Cr.M.P.No.19/D.O/2023 dated 25.05.2023 on the file of the second respondent and Set aside the same and direct the respondents herein to produce the body of the Son of petitioner/detenu Ganesh @ Kappai Ganeshan S/o.Anbalagan aged 36 years now confined in Central prison at Coimbatore before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Subadra Devi
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

(1)The petitioner, father of the detenu Ganesh @ Kappai Ganeshan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 25.05.2023 slapped on his son, branding him as "Drug Offender" 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 points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail suffers from non-application of mind.

(4) In paragraph No.5 of the Grounds of Detention, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail since in a similar case, bail was granted to the detenu herein in the 2nd adverse case by the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act, Cases, Coimbatore, and relied upon an order passed in CMP.No.4177/2022 on 19.12.2022 by the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act, Cases, Coimbatore, in Crime No.2108/2022 for the offences u/s.8[c] read with 20[b][ii][B] of NDPS Act, 1985. On a perusal of the said order, this Court finds that the said order relates to release of the accused on bail u/s.167[2] of Cr.P.C., and not on merits. Therefore, it is not a similar case and the subjective satisfaction of the Detaining Authority, regarding the



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possibility of the detenu coming out on bail suffers from non-application of mind, which vitiates the detention order.

(5) In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 25.05.2023 in Cr.MP.No.19/D.O/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Ganesh @ Kappai Ganeshan, S/o.Anbalagan, aged 36 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SMJ]
04.10.2023

AP
Internet : Yes
Index : Yes / No



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To

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- 6.The Public Prosecutor,
High Court, Madras.



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S.S. SUNDAR, J.,
and
SUNDER MOHAN, J.,

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