



HCP.No.1373/2023

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.1373/2023

K.Nagarjun

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Petitioner

Versus

1.The State rep.by
its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Fort St George,
Kamarajar Salai, 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
H4 Korukkupet Police Station
Chennai.

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Respondents



HCP.No.1373/2023

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the 2nd respondent vide dated 15.05.2023 in Memo No.169/BCDFGISSSV/2023 against the petitioner's brother/detenu[Boopathy, S/o.Kuttiappan, aged about 34 years], confined at Central Prison, Puzhal, Chennai under the Tamil Nadu Act 14 of 1982 and to set aside the same and consequently direct the respondents to produce the body of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Senthilvel for
Mr.G.Prabhakaran
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

(1)The petitioner, brother of the detenu Boopathy, aged 34 years, S/o.Kuttiappan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 15.05.2023 slapped on his brother, 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



HCP.No.1373/2023

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 contended that 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.

(4) From 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 Crl.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. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority to hold that the detenu is likely to be released on bail, suffers from non-application of mind.

(5) The Hon'ble Supreme Court, in the case of ***Rekha Vs. State of Tamil***



HCP.No.1373/2023

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Nadu through Secretary to Government and Another reported in **2011 [5] SCC 244**, has considered a case where it is stated that in the grounds of detention that relatives of detenu are taking action to take him on bail in the criminal case in which the detenu was in remand and that in similar cases, bail was granted by Courts. Since no details had been given about the alleged similar cases in which bail was allegedly granted by the Court concerned, it is held by Hon'ble Supreme Court that in the absence of details, the statement which is mere *ipse dixit*, cannot be relied upon and that itself is sufficient to vitiate the detention order. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble Supreme Court held that the order of detention is liable to be quashed. 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 Crl.MP.No.10485/2021. 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



HCP.No.1373/2023

above grounds, the Detention Order is liable to be quashed.

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(6) In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 15.05.2023 in No.169/BCDFGISSSV/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Boopathy, S/o.Kuttiappan, 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



HCP.No.1373/2023

To
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- 1.The Additional Chief Secretary to Government,
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Kamarajar Salai, Chennai 600 009.
- 2.The Commissioner of Police
Greater Chennai, Vepery
Chennai 600 007.
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H4 Korukkupet Police Station
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- 5.The Public Prosecutor
High Court, Madras.



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HCP.No.1373/2023

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

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H.C.P.No.1373/2023

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