



WEB COPY



HCP.No.1460/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1460/2023

Geetha

Vs.

... Petitioner

1.The State rep.by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police
O/o.The Commissioner of Police
Greater Chennai, Vepery,
Chennai 600 007.

3.The Superintendent
Central Prison, Puzhal, Chennai 600 066.

4.The Inspector of Police
G2 Periamet Police Station
Periamet, Chennai.

... Respondents



HCP.No.1460/2023

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 dated 30.05.2023 vide Memo No.200/BCDFGISSSV/2023 against the petitioner's son Thiru.Akash, son of Paul, aged about 22 years, and he is presently confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	: Mr.N.Selvarajan
For Respondents	: Mr.E.Raj Thilak
	Additional Public Prosecutor
	assisted by Mr.C.Aravind

ORDER

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

(1)The petitioner, mother of the detenu Muralidharan, 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 "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].



HCP.No.1460/2023

(2) Heard the learned counsel for the petitioner and the learned Additional

Public Prosecutor appearing for the respondents.

(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 by relying upon the bail order granted to the accused in a similar case, suffers from non-application of mind, as the accused in the similar case was granted statutory bail u/s.167[2] Cr.P.C., and not on merits.

(4) In paragraph No.4 of the Grounds of Detention, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in the ground case since in a similar case, bail was granted to the detenu therein and relied upon an order passed by the Principal Special Court for EC&NDPS Act, Chennai-104, in Cr.MP.No.2822/2021. On a perusal of page No.174 of the Booklet, this Court finds that the said bail order in the similar case 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 possibility of the



HCP.No.1460/2023

WEB COPY

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

(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 wrongly assumed, that will vitiate the Detention Order. 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 to an accused in a similar case in Cr.MP.No.2822/2021. However, the said bail was granted on the ground that accused is entitled to statutory bail and not on merits 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. 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. It is relevant to extract paragraphs No.10 and 11 of the said judgment of the



HCP.No.1460/2023

Hon'ble Supreme Court:-

WEB COPY

"10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail



WEB COPY



HCP.No.1460/2023

*and there was no reliable material to this effect. Hence,
the detention order in question cannot be sustained."*

(6) In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

(7) Accordingly, the detention order passed by the 2nd respondent dated 30.05.2023 in BCDFGISSSV No.200/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SMJ]
19.10.2023

AP
Internet : Yes



HCP.No.1460/2023

To

WEB COPY

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Police
O/o. The Commissioner of Police
Greater Chennai, Vepery,
Chennai 600 007.
3. The Superintendent
Central Prison, Puzhal, Chennai 600 066.
4. The Inspector of Police
G2 Periamet Police Station
Periamet, Chennai.
5. The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP.No.1460/2023

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

AP

HCP. No.1460/2023

19.10.2023