



HCP.No.1552/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1552/2023

Sundaramoorthy

..

Petitioner

Versus

- 1.The Additional Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
- 2.District Collector & District Magistrate
Mayiladuthurai District, Mayiladuthurai.
- 3.The Superintendent of Police
Mayiladuthurai District, Mayiladuthurai.
- 4.The Inspector of Police
Sembanarkovil Police Station
[i/c] Inspector of Police
All Women Police Station
Mayiladuthurai, Mayiladuthurai District.



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5.The Superintendent
Central Prison, Tiruchirappalli.

.. Respondents

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 20.02.2023 in Order No.COC.No.4/2023, TPDA No.7744, against the detenu Srinivasan, male aged 29 years son of Sundaramoorthy who is confined at Central Prison, Tiruchirappalli as remand prisoner in Cr.No.33/2022 under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the detenu before this Court and set him at liberty.

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

ORDER

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

(1)The petitioner, father of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 20.02.2023 slapped on his son, branding him as "Sexual Offender" under the Tamil Nadu Act 14 of 1982.

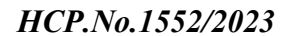
(2)Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



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(3)The learned counsel for the petitioner though canvassed several points before this Court, this Court is able to find some force in his submission that there is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction that the detenu is likely to be released on bail in the ground case by referring to an order passed in the similar case in Cr.MP.No.360/2021 by the learned Sessions Judge, Special Court under POCSO Act, Nagapattinam on 17.05.2021. Learned counsel submitted that the Detaining Authority has referred to the above order passed in the similar case in the Grounds of Detention, in particular, paragraph No.4, to hold that the accused therein was released on bail . However, the said bail order in the similar case is not furnished in the Booklet. Therefore, this Court is of the view that the subjective satisfaction arrived at by the Detaining Authority is based on material which has not been furnished to the detenu. Even before this Court also, the order in Cr.MP.No.360/2021 is not furnished. Therefore, the subjective satisfaction of the Detaining Authority is irrational and suffers from non application of mind and on this ground, the Detention Order is liable to be quashed.



"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



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

(5) 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.



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(6) Accordingly, the detention order passed by the 2nd respondent dated 20.02.2023 in COC.No.4/2023 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.

[S.S.S.R., J.] [S.M, J.]
22.11.2023

AP
Internet : Yes



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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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