



*HCP.No.1635/2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1635/2023

Mrs.A.Junnath

..

Petitioner

Versus

1.The Government of Tamil Nadu  
rep.by its Principal Secretary,  
Home, Prohibition & Excise Department  
Fort St George, Chennai 600 009.

2.The Commissioner of Police/Detaining Authority  
Office of the Commissioner, Tiruppur.

3.The Superintendent of Prison  
Central Prison, Coimbatore.

4.The Inspector of Police  
Tiruppur South Police Station  
Tiruppur City.

..

Respondents



**HCP.No.1635/2023**

**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 pertaining to the Impugned Order made in C.No.6/G/IS/Tiruppur City/2023 dated 28.02.2023 passed by the 2<sup>nd</sup> respondent and quash the same as illegal and improper and consequently direct the respondents to produce the detenu Imam Ali, son of Zakir Hussain, aged about 27 years, now confined and kept in Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.S.Kingston Jerald  
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, wife of the detenu Imam Ali, aged 27 years, S/o.Zakir Hussain, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 28.02.2023 slapped on her husband, branding him as "Goonda" 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 by referring to an order passed in the similar case in Crl.MP.No.374/2023. Learned counsel pointed out that in paragraph No.5 of the order in Crl.MP.No.374/2023 dated 24.01.2023, bail was granted to the accused therein on the following reason:- *"I have considered both side submissions. The earlier bail application filed by the petitioner in CMP.No.62/2023 was dismissed by this Court on 05.01.2023 on the ground that the petitioner has involved in two other previous case. It is reported that in this case, the property has already been recovered and investigation is almost completed. Considering the facts and circumstances and period of detention, I am inclined to grant bail to the petitioner..."*

(4)It is to be seen that the Detaining Authority in the Order of Detention, has observed as follows:- *"5[i]Because, I am aware that in the similar*



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*nature case registered in Coimbatore D3, Podanur Police Station Crime No.697/2022 under sections 342, 392 r/w 397 Indian Penal Code, bail was granted to Kaja Maideen, who was arrested in this case, by the Court of Principal District and Sessions Judge, Coimbatore vide CMP.No.374/2023, dt.24.01.2023."*

(5)It is admitted that in the present case, there are six adverse cases against the detenu. Apart from that, the investigation in the ground case is not yet completed on the date of passing of the Detention Order. It is in the said circumstances, the order of the Detaining Authority by referring to the bail order in CMP.No.374/2023 shows there is total non application of mind on the part of the Detaining Authority. Hence, on the above ground, the Detention Order is liable to be quashed.

(6)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 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



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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. It is relevant to extract paragraphs No.10 and 11 of the said judgment of the Hon'ble Supreme Court:-

*"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*



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*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."*

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

(8) Accordingly, the detention order passed by the 2<sup>nd</sup> respondent dated 28.02.2023 in C.No.6/G/IS/Tiruppur City/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.



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AP  
Internet : Yes



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[S.S.S.R., J.] [S.M, J.]  
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- 5.The Public Prosecutor  
High Court, Madras.



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

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