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*HCP.No.1614/2023*

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.1614/2023

K.Rajeshwari

..

Petitioner

Versus

- 1.State of Tamil Nadu  
rep.by Principal Secretary,  
Home, Prohibition & Excise Department  
Secretariat, Chennai 600 009.
- 2.District Collector & District Magistrate  
Perambalur District Commissioner of Police  
Perambalur District.
- 3.The Superintendent of Prison  
Trichirappalli.
- 4.The Inspector of Police  
Perambalur Police Station  
Permbalur.
- 5.The Superintendent of Police  
Perambalur District, Perambalur.

..

Respondents



**HCP.No.1614/2023**

**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 leading to the detention of petitioner's husband who is detained as Goonda at 3<sup>rd</sup> respondent / Central Prison, Tiruchirappalli by the 2<sup>nd</sup> respondent vide his order in Cr.MP.No.6/2023 dated 29.04.2023 and quash the same as illegal and consequently direct the 4<sup>th</sup> respondent to produce the body of the detenu Ayyanar, son of Viswanathan, aged about 23 years, from the 4<sup>th</sup> respondent before this Court and set him at liberty.

For Petitioner : Mr.Lourdu Paul Maurya

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 Ayyanar, aged 23 years, S/o.Viswanathan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 29.04.2023 slapped on her husband, branding him as "Goonda" under the Tamil Nadu Act 14 of 1982.



***HCP.No.1614/2023***

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

(3) Though the petitioner has raised several grounds in the affidavit filed in support of the petition, the learned counsel for the petitioner, referring to page No.193 of the Booklet, pointed out that the Detaining Authority had arrived at the subjective satisfaction that the detenu is likely to be released on bail in the ground case by referring to the bail granted to an accused in a similar case in Cr.MP.No.4356/2022 on 30.09.2022 by the learned Principal District and Sessions Judge, Tiruchirappalli after recording the fact that there was no previous case as against the accused therein. In the present case, there are two adverse cases as against the detenu herein and therefore, it is submitted that there is no application of mind on the part of the Detaining Authority while arriving at the subjective satisfaction that the detenu is likely to be released on bail in the ground case.

(4) This Court, on a perusal of the bail order in CrI.MP.No.4356/2022 [similar case] finds that the bail was granted to the accused therein after recording the fact that no previous case is pending against the accused therein and that, due to wordy quarrel between the deceased and his



**HCP.No.1614/2023**

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friend, the alleged occurrence had taken place. The case in Crl.MP.No.4356/2022 is not similar. This Court finds some force in the submission of the learned counsel for the petitioner that there is total non application of mind on the part of the Detaining Authority.

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



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HCP.No.1614/2023

*"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 and there was no reliable material to this effect.*



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**HCP.No.1614/2023**

*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 reason, this Court is of the view that the detention order is liable to be quashed.

(7) Accordingly, the detention order passed by the 2<sup>nd</sup> respondent dated 29.04.2023 in Cr.MP.No.06/2023 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.]  
31.10.2023

AP  
Internet : Yes



**HCP.No.1614/2023**

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State of Tamil Nadu  
Home, Prohibition & Excise Department  
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- 2.District Collector & District Magistrate  
Perambalur District Commissioner of Police  
Perambalur District.
- 3.The Superintendent of Prison  
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Perambalur District, Perambalur.
- 6.The Public Prosecutor  
High Court, Madras.



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***HCP.No.1614/2023***

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

AP

H.C.P.No.1614/2023

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