



WEB COPY



HCP.No.1564/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1564/2023

Sivagami

... Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police
Tambaram City.

3.The Superintendent of Prison
Central Prison, Puzhal, Chennai 66.

4.The Inspector of Police [L&O]
T5 Kundrathur Police Station.
Chennai.

... 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



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30.05.2023 in memo No.23/BCDFGISSSV/2023 against the petitioner's son K.Sugash, male, aged 25 years, son of Kumaresan, who is 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.S.Senthilvel
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, mother of the detenu Sunil, 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 "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.
- (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



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granted to the accused in a similar case, suffers from non-application of mind.

(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 learned Judicial Magistrate, Tambaram, in CMP.No.356/2020 on 18.09.2020. On a perusal of the said order in page No.349 of the Booklet, this Court finds that the said order relates to release of the accused on bail u/s.167[2] of Cr.P.C., since the accused therein had been in prison for more than 95 days and not on merits. Therefore, it is not a similar case and the subjective satisfaction of the Detaining Authority, regarding the possibility of the 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



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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.9/2023. 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. Hence, on the above grounds, the Detention Order is liable to be quashed.

(6) In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 30.05.2023 in Memo No.22/BCDFGISSSV/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]
02.11.2023

AP
Internet : Yes



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To

- 1.The Principal Secretary to Government,
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- 3.The Superintendent of Prison
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Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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