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HCP.No.1672/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1672/2023

S.Ravikumar

... Petitioner

Vs.

1.The State of Tamilnadu rep.by its
Secretary to Government
Home, Prohibition and Excise Department,
Fort St George, Chennai – 600 009.

2.State rep.by
The Commissioner of Police
Greater Chennai, The Commissioner Office
Vepery High Road, Vepery,
Chennai 600 007.

3.State rep.by
the Inspector of Police
Team 37, EDF-II
Vepery, Chennai 600 007.

4.The Superintendent of Prison
Central Prison-Puzhal
Puzhal, Chennai 600 066.

... Respondents



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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 connecting with the order of detention passed by the 2nd respondent in Memo No.258/BCDFGISSSV/2023 dated 27.06.2023 against the petitioner son Mr.R.Karthick @ Kishore Srinivasan aged 31 years, son of S.Ravikumar, who is confined at Central Prison, Puzhal, under section 2[f] of the Tamil Nadu Act 14/82 vide detention order dated 27.06.2023 and set aside the same, direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner	: Mr.P.Palaninathan
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 27.06.2023 slapped on his son, branding him as "Goonda" under the Tamil Nadu Act 14 of 1982.



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(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.

(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 Special Metropolitan Magistrate Court for CCB and CBCID Cases in CrI.MP.No.6800/2022. On a perusal of the said order in page No.789 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 60 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



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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 CrL.MP.No.6800/2022. 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 27.08.2023 in No.258/BCDFGISSSV/2023, is hereby



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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]
05.12.2023

AP

Internet : Yes

To

- 1.The Secretary to Government
State of Tamilnadu, Home, Prohibition and Excise Department,
Fort St George, Chennai – 600 009.
- 2.The Commissioner of Police
Greater Chennai, The Commissioner Office
Vepery High Road, Vepery, Chennai 600 007.
- 3.The Inspector of Police
Team 37, EDF-II, Vepery, Chennai 600 007.
- 4.The Superintendent of Prison
Central Prison-Puzhal
Puzhal, Chennai 600 066.
- 5.The Public Prosecutor,
High Court, Madras.



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

AP

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