



WEB COPY



HCP.No.1698/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1698/2023

Sindhu

... Petitioner

Vs.

1.State rep.by
The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai-9.

2.The Commissioner of Police
Salem City.

3.The Superintendent of Prison
Central Prison, Salem.

4.The Inspector of Police
Fairlands Police Station
Salem City.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus to call for the records in



HCP.No.1698/2023

CMP.No.36/Goonda/Salem City/2023 dated 10.05.2023 on the file of the 2nd respondent and quash the detention as illegal and direct the respondents to produce the detenu Thiru.Santhoshkumar, S/o.Krishnan aged about 20 years, now confined at Central Prison, at Salem, before this Court and set him at liberty forthwith.

For Petitioner : Ms.S.Sengodi
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

- (1)The petitioner, mother of the detenu Santhoshkumar, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 10.05.2023 slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].
- (2)Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



WEB COPY

(3) Though several points have been raised by the learned counsel for the petitioner, pointed out that there was total non application of mind as the Detaining Authority has not applied his mind as to the similar case relied upon by him. It is pointed out that subjective satisfaction of the Detaining Authority by relying upon an order passed in similar case, namely, in CMP.No.346/2019, by the learned Sessions Judge, Salem.

(4) A perusal of the Booklet, in particular, page No.167, it is seen that the facts of the similar case relied upon by the Detaining Authority is entirely different. The accused therein was detained earlier under Act 14 of 1982 and his bail application was filed after his release from the detention under Act 14 of 1982. It was in those circumstances, bail was granted to the accused therein by referring to the extraordinary circumstances therein. In the instant case, the Detaining Authority ought not to have relied upon the said bail order of the similar case.

(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



HCP.No.1698/2023

WEB COPY

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 CMP.No.346/2019 in which case, the accused was granted bail on a different factual premise, on completion of his earlier detention period 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 ground, the Detention Order is liable to be quashed.

(6) In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 10.05.2023 in CMP.No.36/Goonda/Salem 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.

[SSSRJ] [SMJ]
16.10.2023

AP
Internet : Yes



HCP.No.1698/2023

To

WEB COPY

The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai-9.

2. The Commissioner of Police
Salem City.

3. The Superintendent of Prison
Central Prison, Salem.

4. The Inspector of Police
Fairlands Police Station
Salem City.

5. The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP.No.1698/2023

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

AP

HCP. No.1698/2023

16.10.2023