



H.C.P.No.1723 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1723 of 2023

A.Gayathri

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Erode District, Erode.
- 3.The Superintendent of Prison,
Central Prison, Coimbatore.
- 4.The Superintendent of Police,
Erode District, Erode.
- 5.The Inspector of Police,
Erode South Police Station,
Erode.

... Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the entire records from the 2nd respondent in connection with order in CrI.MP.No.18/Goonda/2023/C1, dated 17.07.2023, and quash the same and produce the petitioner's husband namely Arun @ Ilayaraja @ Kunjayee, S/o.(Late) Gopal, aged 32 years, now confined in Central Prison, Coimbatore, under the Tamil Nadu Act 14 of 1982 before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.P.Pugalenth
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Aravind C.

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

The petitioner, wife of the detenu Arun @ Ilayaraja @ Kunjayee, S/o.(Late) Gopal, aged 32 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 17.07.2023 slapped on her husband, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand



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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.

3.The learned counsel for the petitioner though canvassed several points before this Court, focused mainly on the point that there is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction. Learned counsel pointed out that the Detaining Authority has not relied upon any similar case to arrive at the subjective satisfaction and has merely stated *“I am aware that he has moved bail petition in Crime No.198/2023 case before the Honourable Principal Sessions Judge, Erode and the same was dismissed in Criminal Miscellaneous Petition Number 2356/2023 dated 07.07.2023. However, I am aware that there is a real possibility of the bail would be granted to him in the above cases in future. Because, it has been revealed that under section 437 of the Criminal Procedure Code if the arrested person*



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committed non bailable offences, it shall be on consideration about the offence committed the person, he may released on bail till the period of consideration.” This statement of the Detaining Authority without any material, is mere *ipse dixit* and suffers from non application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

4.From a perusal of the Grounds of Detention, in particular, paragraph No.5, it is seen that the Detaining Authority has arrived at the subjective satisfaction that the detenu would be coming out on bail on the ground that, if the arrested person has committed non-bailable offence, he may be released on bail. This is irrational and hence, the Detention Order is vitiated.

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. 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 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



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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."

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

7. Accordingly, the detention order passed by the 2nd respondent in CrI.MP.No.18/Goonda/2023/C1, dated 17.07.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Arun @ Ilayaraja @ Kunjayee, S/o.(Late) Gopal, aged 32 years, 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.)
13.12.2023

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Neutral Citation : Yes / No

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Erode South Police Station,
Erode.
- 6.The Public Prosecutor,
High Court, Madras.



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