



WEB COPY



H.C.P.No.1980 of 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.1980 of 2023

Elumalai M

... Petitioner

Vs.

- 1.The Chief Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The District Collector and District Magistrate, Ranipet,
Office of District Collector and District Magistrate,
Ranipet, Tamil Nadu – 632 401.
- 3.The Superintendent of Police Ranipet,
Office of Superintendent of Police Ranipet,
Ranipet, Tamil Nadu – 632 401.
- 4.The Superintendent,
Central Prison, Salem,
Tamil Nadu- 636 008.



H.C.P.No.1980 of 2023

5.The Inspector of Police (L & O)
Arakonam Police Station,
Ranipet.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus calling for the entire records connected with the order of the 2nd respondent herein in B3/D.O.No.70/2022 dated 13.12.2022 against the petitioner's son, Ajith @ Barbogi Ajith S/o.Elumalai aged 25 years, confined at Central prison, Salem and set aside the same, and consequently, directing the respondents herein to produce the body and person of the detenu before this Hon'ble Court and set him at liberty forthwith.

For Petitioner	:	Mr.V.Parthiban
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.**)

The petitioner, father of the detenu Ajith @ Barbogi Ajith, aged 25 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 13.12.2022, slapped on his son,



H.C.P.No.1980 of 2023

branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual 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.Though several points have been raised by the learned counsel for the petitioner, the learned counsel submits 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, as the accused in the similar case was granted statutory bail u/s.167[2] Cr.P.C., and not on merits.



H.C.P.No.1980 of 2023

WEB COPY

4. In paragraph No.5 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, by relying upon an order passed by the Special Judge for EC Act Cases, Salem, in CrI.M.P.No.552 of 2017, dated 02.01.2018. On a perusal of page No.104 of the Booklet, this Court finds that the said bail order in the similar case relates to release of the accused on bail u/s.167[2] of Cr.P.C., 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 in the order of detention is non-existent or a material information is wrongly



H.C.P.No.1980 of 2023

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 CrI.M.P.No.552 of 2017. However, the said bail was granted on the ground that accused therein 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. 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



H.C.P.No.1980 of 2023

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. 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.



H.C.P.No.1980 of 2023

WEB COPY

7. Accordingly, the detention order passed by the 2nd respondent, dated 13.12.2022, in B3/D.O.No.70/2022, 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

mkn

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

1. The Chief Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The District Collector and District Magistrate, Ranipet,
Office of District Collector and District Magistrate,
Ranipet, Tamil Nadu – 632 401.
3. The Superintendent of Police Ranipet,
Office of Superintendent of Police Ranipet,
Ranipet, Tamil Nadu – 632 401.

Page 7 of 9



H.C.P.No.1980 of 2023

WEB COPY

4. The Superintendent,
Central Prison, Salem,
Tamil Nadu- 636 008.

5. The Inspector of Police (L & O)
Arakonam Police Station,
Ranipet.

6. The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.1980 of 2023

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

mkkn

H.C.P.No.1980 of 2023

31.10.2023