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H.C.P.No.1777 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 18.12.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE S.S. SUNDAR**

**AND**

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

**H.C.P.No.1777 of 2023**

Ettiyammal

... Petitioner

Vs.

1.State of Tamil Nadu,

Represented by the Additional Chief Secretary,  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,

Greater Chennai,  
Vepery, Chennai – 600 007.

3.The Inspector of Police,

S-8, Adambakkam Police Station,  
Chennai.

4.The Superintendent of Prison,

Central Prison-II,  
Puzhal, Chennai – 600 066.

... Respondents



H.C.P.No.1777 of 2023

**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 records relating to the detention order in Memo.No.292/BCDFGISSSV/2023 dated 06.07.2023 passed by the 2nd respondent under the TamilNadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Vijayakumar @ Simini, S/o. Panchanathan, aged about 22 years, the detenu now confined in Central Prison, Puzhal, Chennai, before this Court and set the petitioner's son Vijayakumar @ Simini, S/o. Panchanathan, aged about 22 years, the detenu herein at liberty.

For Petitioner : Mr.R.Muthukumar  
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, mother of the detenu Vijayakumar @ Simini, S/o.Panchanathan, aged about 22 years, has come forward with this petition challenging the detention order passed by the 2<sup>nd</sup> respondent dated 06.07.2023 slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,



H.C.P.No.1777 of 2023

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.

3.Though several grounds are raised in the petition, the learned  
counsel for the petitioner pointed out that the Detaining Authority has not  
applied his mind while expressing his subjective satisfaction that the detenu  
is also likely to be released on bail. It is his submission that the case relied  
upon by the Detaining Authority, is not similar to the present case, as the  
bail was granted in favour of the accused therein only by referring to Covid-  
19 pandemic.

4.On a perusal of the Booklet, this Court finds that the bail order  
passed in the case relied upon by the Detaining Authority, in  
Crl.M.P.No.10485 of 2021, dated 26.05.2021, is not similar to the case on  
hand, since the accused therein was released on bail mainly by citing



H.C.P.No.1777 of 2023

Covid-19. Therefore, this Court finds that the subjective satisfaction of the Detaining Authority is irrational and the detention order is liable to be quashed on the ground of non-application of mind.

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 the accused in a similar case, wherein, the said bail was granted mainly by citing Covid-19 Pandemic. 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:-

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*“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 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.In view of the aforesaid reason, the detention order passed by the 2<sup>nd</sup> respondent in BCDFGISSSV No.292/2023, dated 06.07.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Vijayakumar @ Simini, S/o. Panchanathan, aged about 22 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.)  
18.12.2023

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H.C.P.No.1777 of 2023

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

- 1.The Additional Chief Secretary,  
Home, Prohibition and Excise Department,  
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- 2.The Commissioner of Police,  
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Vepery, Chennai – 600 007.
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- 5.The Public Prosecutor,  
High Court, Madras.



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

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