



WEB COPY



HCP.No.1890/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1890/2023

R.Sakthivel

... Petitioner

Vs.

- 1.The Additional Chief Secretary to the Government
Government of Tamil Nadu
[Home] Prohibition and Excise Department,
Secretariat, Fort St George, Chennai – 600 009.
- 2.The Commissioner of Police
Greater Chennai, O/o.The Commissioner
of Police, [Goondas Section]
Avadi, Chennai 600 056.
- 3.The Superintendent
Central Prison, Puzhal
Chennai 600 066.
- 4.The Inspector of Police
[Anti Land Grabbing Special Cell – II]
Chennai Central Investigation Tam-II
Egmore, Chennai 600008.

... Respondents



HCP.No.1890/2023

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the entire records connected with the order of the 2nd respondent herein in Memo NO.192/BCDFGISSSV/2023 dated 30.05.2023 passed against the petitioner's brother of the detenu namely Thiru Saravanan, son of Bugendran, aged about 45 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same consequently directing the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Ms.R.Saritha

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, brother of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 30.05.2023 slapped on his brother, branding him as "Goonda" under the Tamil Nadu Act 14 of 1982.
- (2)Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



HCP.No.1890/2023

WEB COPY

(3) Though several points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the 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 detenu herein in the adverse case, suffers from non-application of mind.

(4) In paragraph No.4 of the Grounds of Detention, the Detaining Authority has also stated that there is a possibility of the detenu coming out on bail in the ground case since in the adverse case, bail was granted to the the detenu herein and relied upon the order passed by this Court in CrI.OP.No.201/2022. However, a perusal of the said order in the Booklet in page No.289, this Court finds that the said order relates to release of the detenu herein by recording the fact that the said case relates to civil dispute and that a suit is pending between the parties. However, the ground case relates to criminal offence. 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.



HCP.No.1890/2023

WEB COPY

(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 in the ground case by referring to the bail granted to him in the adverse case by this Court in CrI.OP.No.201/2022. However, the said bail was granted on the ground that the case is of civil nature and that a civil suit is pending between the parties. But the ground case of the detenu is not civil in nature and that it relates to criminal offence. Hence, the adverse case cannot be compared to. This indicates non-application of mind on the part of the Detaining Authority. 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:-



WEB COPY



HCP.No.1890/2023

"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



HCP.No.1890/2023

WEB COPY

sustained."

(6)In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment and in view 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 dated 30.05.2023 in Memo No.192/BCDFGISSSV/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]
24.11.2023

mkn
Internet : Yes



HCP.No.1890/2023

WEB COPY

To

1. The Additional Chief Secretary to the Government
Government of Tamil Nadu
[Home] Prohibition and Excise Department,
Secretariat, Fort St George, Chennai – 600 009.
2. The Commissioner of Police
Greater Chennai, O/o. The Commissioner
of Police, [Goondas Section]
Avadi, Chennai 600 056.
3. The Superintendent
Central Prison, Puzhal
Chennai 600 066.
4. The Inspector of Police
[Anti Land Grabbing Special Cell – II]
Chennai Central Investigation Tam-II
Egmore, Chennai 600008.
5. The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP.No.1890/2023

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

mkn

HCP. No.1890/2023

24.11.2023