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H.C.P.No.1958 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

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

H.C.P.No.1958 of 2023

Sumathi

... Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.

2.The Commissioner of Police,
Salem City, Salem District.

3.The Superintendent of Prison,
Central Prison – Salem,
Salem District.

4.State rep. By its
The Inspector of Police,
Kitchipalayam Police Station,
Salem District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records relating to the petitioner's grandson's detention under Tamil Nadu Act 14 of 1982 vide detention order dated 26.06.2023 on the file of the second respondent made in proceedings Memo C.M.P. No.61/Goonda/Salem City/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's grandson namely Dinesh @



H.C.P.No.1958 of 2023

Dineshkumar @ Poonaiyan, S/o.Selvam, aged 23 years before this Court and set the petitioner's grandson at liberty from detention, now the petitioner's grandson detained at Central Prison, Salem.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

The petitioner, grandmother of the detenu Dinesh @ Dinesh Kumar @ Poonaiyan, has come forward with this petition challenging the detention order passed by the second respondent dated 26.06.2023 slapped on her grandson, branding him as "Goonda" 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 grounds have been raised in the petition, the learned counsel for the petitioner submitted that similar case relied upon by the detaining authority is not similar as bail was granted to the petitioner in the similar case in CrI.M.P.No.3749 of 2011 vide dated 22.12.2011 after recording that the petitioner therein was in jail for 74 days and that the prosecution has not raised any serious objection. Taking note of the fact that the investigation was over, bail was granted to the petitioner therein.

4. In paragraph 4 of the grounds of detention, the detaining authority has stated that there is a real possibility of the detenu coming out on bail in the ground case, since, in a similar case, bail was granted to the accused therein, by relying upon an order passed by the Principal Sessions Judge, Salem, in CrI.M.P.No.3749 of 2011, dated 22.12.2011. On a perusal of page Nos.108 and 109 of the Booklet, this Court finds that bail was granted in the said case after recording that the petitioner therein is in jail for 74 days and no serious objection was raised by the prosecution for grant of bail 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.



H.C.P.No.1958 of 2023

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 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 an accused in a similar case in CrI.M.P.No.3749 of 2011, dated 22.12.2011. However, bail was granted in the said case on the ground that accused therein is in jail for 74 days and the prosecution has not raised serious objection for grant of bail 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



WEB COPY



H.C.P.No.1958 of 2023

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.



H.C.P.No.1958 of 2023

7. In view of the aforesaid reason, the detention order passed by the second respondent dated 26.06.2023 in C.M.P. No.61/Goonda/Salem City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Dinesh @ Dinesh Kumar @ Poonaiyan, S/o.Selvam, aged about 23 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.)
24.11.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

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Home, Prohibition and Excise Department,
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- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



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