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HCP.No.1858/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1858/2023

Devagi

Vs.

... Petitioner

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St George,
Chennai – 600 009.
- 2.The Commissioner of Police/Detaining Authority
Huzur Road, Coimbatore City
Coimbatore-18.
- 3.The Superintendent of Police
Central Prison, Coimbatore
Coimbatore District.
- 4.The Inspector of Police
Singanallur Police Station.
Coimbatore District.

... Respondents



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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 relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 23.02.2023 on the file of the 2nd respondent herein made in proceedings Memo C.No.14/G/IS/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely J.Samuvel, son of Jayaraman, aged 24 years before this Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner	: Mr.W.Camyles Gandhi
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, mother of the detenu Samuvel, aged 24 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 23.02.2023 slapped on her son, 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.



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(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 accused in a similar case, suffers from non-application of mind.

(4) In paragraph No.8[ii] 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 2nd adverse case since in a similar case, bail was granted to the accused therein and relied upon the order passed by the learned Judicial Magistrate, No.1, Coimbatore, in Cr.MP.No.17887/2022 on 27.06.2022. However, a perusal of the said order in the Booklet in page No.191, this Court finds that the said order relates to release of the accused on bail u/s.167[2] of Cr.P.C., since the accused therein had been in prison for more than 90 days 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.



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(5) Further, the learned counsel also pointed out that in the Grounds of Detention, in particular, paragraph No.8[i], the bail order in the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the first adverse case, was obtained during COVID-19 situation.

(6) From a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail in a similar case in CMP.No.13701/2021 on 11.05.2021 passed by the learned Judicial Magistrate No.VI, Coimbatore. However, it is seen that the bail order in the similar case was obtained during COVID-19 situation and the bail was granted with a specific reference to COVID-19. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority to hold that the detenu is likely to be released on bail, suffers from non-application of mind.

(7) 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



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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 2nd adverse case by referring to a bail order granted to an accused in a similar case in Cr.MP.No.17887/2022. However, the said bail was granted on the ground that accused is entitled to statutory bail and not on merits. Further, reliance placed by the Detaining Authority on yet another similar order in CMP.No.13701/2021 passed by the learned Judicial Magistrate No.6, Coimbatore, on 11.05.2021 to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the 1st adverse case, was obtained during COVID-19 situation and therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail in the adverse cases, suffers from non-application of mind. Hence, on the above grounds, the Detention Order is liable to be quashed.

(8) In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 23.02.2023 in C.No.14/G/IS/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be



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set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SMJ]
01.11.2023

AP

Internet : Yes

To

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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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