



WEB COPY



HCP.No.1880/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1880/2023

Saicharan

... Petitioner

Vs.

1.State of Tamilnadu rep.by its
Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai, Chennai.

3.The Inspector of Police
Central Crime Branch II
Chennai.

4.The Superintendent
Central Prison, Puzhal
Chennai.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution



HCP.No.1880/2023

of India praying for a Writ of Habeas Corpus calling for the entire records relating to petitioner's father detention under Tamil Nadu Act 14 of 1982 vide detention order dated 26.06.2023 on the file of the 2nd respondent herein made in proceedings No.257/BCDFGISSSV/2023 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's father namely Shankar, aged 64 years son of Venkataraman before this Court and set him at liberty, now petitioner's father detained at Central Prison, Puzhal, Chennai 600 066.

For Petitioner	: Mr.C.C.Chellappan
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, son of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 26.06.2023 slapped on his father, 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 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.

(4) In paragraph No.4 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 and relied upon an order passed by the Special Metropolitan Magistrate Court for CCB and CBCID Cases in CrI.MP.No.6800/2022. On a perusal of the said order in page No.1070 of the Booklet, 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 60 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)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 an accused in a similar case in CrL.MP.No.6800/2022.

However, the said bail was granted on the ground that accused 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. Hence, on the

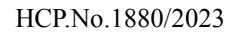
above grounds, the Detention Order is liable to be quashed.

(6)In view of the aforesaid reason, the detention order passed by the 2nd

respondent dated 27.08.2023 in No.258/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



[SSSRJ] [SMJ]
21.12.2023

5. The Public Prosecutor, High Court, Madras.



WEB COPY



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

AP

HCP. No.1880/2023

21.12.2023