



WEB COPY



H.C.P.No.1994 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 09.11.2023**

CORAM :

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

**AND**

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

**H.C.P.No.1994 of 2023**

Guna @ Gunasekaran

... Petitioner

Vs.

- 1.The Secretary to the Government,  
Home, Prohibition & Excise Department,  
Secretariat,  
Chennai – 600 009.
- 2.District Collector and District Magistrate,  
Kancheepuram,  
Kancheepuram District.
- 3.The Superintendent of Police,  
Kancheepuram,  
Kancheepuram District.
- 4.The Superintendent,  
Central Prison,  
Puzhal,  
Chennai District.



H.C.P.No.1994 of 2023

5.State represented by  
The Inspector of Police,  
Kanchi Taluk Police Station,  
Kancheepuram District.

... Respondents

**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 in connection with the order of detention passed by the 2nd respondent dated 19.05.2023 in RC.NO.71/2023/M6-D.O.No.15/2023 against the petitioner Guna @ Gunasekaran, M/22years, S/o. Raghu, who is confined at Central prison, Puzhal, Chennai and set aside the same and consequently, direct the respondents to produce the detainee before this Court and set him at liberty.

|                 |   |                                                                           |
|-----------------|---|---------------------------------------------------------------------------|
| For Petitioner  | : | Mr.Ajayaraman                                                             |
| For Respondents | : | Mr.E.Raj Thilak<br>Additional Public Prosecutor<br>assisted by Aravind C. |

### **ORDER**

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

The petitioner, namely Guna @ Gunasekaran, aged 22 years, S/o.Raghu, has come forward with this petition challenging the detention



H.C.P.No.1994 of 2023

order passed by the 2<sup>nd</sup> respondent, dated 19.05.2023 slapped on him, 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.The learned counsel for the petitioner pointed out that, at Page No.193 of the Booklet, only the English Version of the Accident Register has been given and the translated version of the Accident Register has not been furnished to the petitioner as seen from the Booklet. Similarly, the learned counsel pointed out that, at Page No.211 of the Booklet, only the English Version of the Post-mortem Certificate has been given and the translated version of the Post-mortem Certificate has not been furnished to the petitioner. The learned counsel submits that the literacy level of the



H.C.P.No.1994 of 2023

petitioner/detenu is only 9<sup>th</sup> Std. It is in this circumstances, the learned counsel for the petitioner states that serious prejudice has been caused to the petitioner for making effective representation.

4.The above issue is already covered by the Hon'ble Supreme Court in the case of ***Powanammal Vs. State of Tamil Nadu*** reported in (1999) 2 ***SCC 413***, wherein, the Hon'ble Supreme Court has held that what applies to a document, would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu. In the said judgment, the Hon'ble Supreme Court has further held as follows :

*"6.The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenu, would vitiate her further detention.*

.....

*16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenu be*



*set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."*

5.On a perusal of Page No.193 of the Booklet, this Court finds that the Accident Register is in English and the translated copy of the said document is not furnished to the detenu. Further, on a perusal of Page No.211 of the Booklet, this Court finds that the Postmortem Certificate is in English and the translated copy of the said document is not furnished to the detenu. Since a specific stand has been taken that serious prejudice is caused to the petitioner, this Court finds that the failure to furnish translated copy of the material documents relied upon by the Detaining Authority, vitiates the Detention Order.

6.The learned counsel for the petitioner further submits that, in the similar case relied upon by the Detaining Authority in CrI.M.P.No.2369 of 2019, the accused therein was granted bail only on the ground that material part of the investigation was over and hence, the said case is not similar to the present case.



H.C.P.No.1994 of 2023

WEB COPY

7. In Para No.5 of the Grounds of Detention, the Detaining Authority, has relied upon a similar case in Crl.M.P.No.2369 of 2019 to arrive at the subjective satisfaction that there is a possibility of the detenu coming out on bail in the ground case. This Court finds that the accused in the said case in Crl.M.P.No.2369 of 2019 has been granted bail only on the ground that material part of the investigation was over, however, the position is not same in the present case. Therefore, the contention of the learned counsel for the petitioner that there is non-application of mind by the Detaining Authority is also substantiated.

8. 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. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble



H.C.P.No.1994 of 2023

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 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.*



H.C.P.No.1994 of 2023

WEB COPY

*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."*

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 even on the ground of non-application of mind.

9. In view of the aforesaid reasons, the detention order passed by the 2<sup>nd</sup> respondent, dated 19.05.2023, in Rc.No.71/2023/M6-D.O.No.15/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Guna @ Gunasekaran, aged 22 years, S/o.Raghu, 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.)  
09.11.2023

mkn



H.C.P.No.1994 of 2023

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

- 1.The Secretary to the Government,  
Home, Prohibition & Excise Department,  
Secretariat,  
Chennai – 600 009.
- 2.The District Collector and District Magistrate,  
Kancheepuram,  
Kancheepuram District.
- 3.The Superintendent of Police,  
Kancheepuram,  
Kancheepuram District.
- 4.The Superintendent,  
Central Prison,  
Puzhal,  
Chennai District.
- 5.The Inspector of Police,  
Kanchi Taluk Police Station,  
Kancheepuram District.
- 6.The Public Prosecutor,  
High Court, Madras.



WEB COPY



H.C.P.No.1994 of 2023

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

mkn

**H.C.P.No.1994 of 2023**



WEB COPY



H.C.P.No.1994 of 2023

**09.11.2023**