



WEB COPY



HCP.No.2037 of 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.2037 of 2023

Meena .. Petitioner

Vs.

1.The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

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

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

4.State rep. By Inspector of Police,
Kitchipalayam Police Station,
Salem City.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Habeas Corpus to call for the records relating to the detention order passed by the second respondent in proceedings namely C.M.P. No.60/Goonda/Salem City/2023 dated 26.06.2023 and to set aside the same and direct the fourth respondent to produce the detenu the petitioner's son viz., Thiru.Kathirvel @ Kathir, aged 20 years, son of Ramesh, residing at F-Block, Door No.371, Kaligounderkadu, New Housing Board, Kitchipalayam, Salem - 15, who is presently undergoing detention



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in the Central Prison, Salem as Goonda under Section 2(f) of 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] before this Court and thereby setting him at liberty forthwith.

For Petitioner : Mr.R.Muthu Ramanand

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, mother of the detenu Kathirvel @ Kathir, has come forward with this petition challenging the detention order passed by the second respondent dated 26.06.2023 slapped on her son, 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.



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3. Though several points have been raised by the petitioner, the learned counsel for the petitioner submitted that similar order relied upon by the detaining authority to arrive at subjective satisfaction that the detenu is likely to be released on bail 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 accused therein, by relying upon an order passed by the Principal Sessions Judge, Salem, in C.M.P.No.346 of 2019, dated 02.02.2019. On a perusal of page Nos.191 and 192 of the Booklet, this Court finds that the accused therein was detained under Act 14 of 1982 for considerable time and taking note of the said fact, bail was granted to the accused therein. 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 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 C.M.P.No.346 of 2019. However, bail was granted in the said case on the ground that accused therein was detained under Act 14 of 1982 and he was in incarceration for considerable time 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*



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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.



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7. In view of the aforesaid reason, the detention order passed by the second respondent dated 26.06.2023 in C.M.P. No.60/Goonda/Salem City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Kathirvel @ Kathir, S/o.Ramesh, aged about 20 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

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Salem City, Salem.
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.The Inspector of Police,
Kitchipalayam Police Station,
Salem City.
- 5.The Public Prosecutor
High Court, Madras.



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SUNDER MOHAN, J.,**

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