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H.C.P.No.2135 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2135 of 2023

Vanaroja

... Petitioner

Vs.

- 1.The State of Tamil Nadu represented by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Krishnagiri District,
Krishnagiri.
- 3.The Superintendent,
Krishnagiri District,
Krishnagiri.
- 4.The Superintendent,
Central Prison,
Salem District.



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5. The Inspector of Police,
Krishnagiri Town Police Station,
Krishnagiri 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 entire records connected with the impugned order of detention passed by the 2nd respondent in SC.NO. 18/2023 dated 17.8.2022 and quash the same, consequently directing the respondents to produce the detenu namely the petitioner's son Agilan @ Agil, S/o. Annadurai aged about 26 years detained in the Central Prison, Salem before the Honble Court and set him at liberty.

For Petitioner : Mr.R.Thirumoorthy
for Mr.T.Elumalai

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Aravind C.

ORDER

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

The petitioner, mother of the detenu Agilan @ Agil, S/o. Annadurai, aged about 26 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 17.08.2023, slapped on



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her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand 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 points were canvassed by the learned counsel for the petitioner, we find that the order of detention is liable to be quashed on the sole ground that the Detention Order suffers from non-application of mind. The detenu was arrested in the ground case for the alleged offence under Section 7(1)(a) of the Criminal Law (Amendment) Act, 2005. The detenu was branded as Goonda. Section 2(f) of Tamil Nadu Act 14 of 1982 reads as follows :

“2. In this Act, unless the context otherwise requires,-

...

(f) "goonda" means a person who either by himself or as a member of or leader of a gang, commits, or attempts to



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commit or abets the commission of offences, punishable under section 153 or section 153-A under chapter VIII or under Chapter XVI other than sections 354, 376, 376-A, 376-B, 376-C, 376-D, and 377[7] or Chapter XVII or Chapter XXII of the Indian Penal Code 1860 (Central Act XLV of 1860) or punishable under section 3 or section 4 or section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (Tamil Nadu Act 59 of 1992);”

4. Section 7(1)(a) of the Criminal Law (Amendment) Act, 2005 is not one of those offences mentioned in order to brand a person as a Goonda. That apart, we find that Section 7(1)(a) is not a penal provision. This has been reiterated by this Court in several decisions including the decision in ***CrI.O.P.No.24433 of 2021 [Surya @ Pushpanathan v. State and another]*, dated 05.07.2023.**

5. Interestingly, the Detaining Authority had issued an Errata, dated 08.09.2023, stating as follows :

“In the English and Tamil versions of the Grounds of Detention, the Act has been wrongly mentioned as “Section



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7(1)(a) of the Criminal Law Amendment Act, 2005” instead of “Section 195A of the Indian Penal Code, 1860” as amended in Section 7(1)(a) of the Criminal Law Amendment Act, 2005.”

6.Firstly, we find that the Detaining Authority had proceeded on the basis that Section 7(1)(a) is an offence. This reflects total non-application of mind. Be that as it may, the offence alleged against the detenu in the ground case does not fall within the offences stated in Section 2(f) of the Tamil Nadu Act 14 of 1982 to brand the detenu as a Goonda. Even Section 195A, which comes under Chapter-XI of the Indian Penal Code, does not fall within the offences stated in Section 2(f) of the Tamil Nadu Act 14 of 1982. It is trite that, if the offences alleged against the detenu are not within the offences falling under Chapters VIII, XVI, XVII, XXII mentioned in Section 2(f) of the Tamil Nadu Act 14 of 1982, the Detention Order cannot be sustained. Therefore, we are of the view that the Detention Order 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



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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.

8.We also find that the other adverse cases against the detenu are of the year 2022, which are stale and cease to have relevance to the subject matter of enquiry and do not indicate the immediate need to detain the detenu.

9.For the aforesaid reasons, the detention order passed by the 2nd respondent, dated 17.08.2023, in S.C.No.18/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu Agilan @ Agil, S/o.Annadurai, aged about 26 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.)
20.11.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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Chennai – 600 009.
- 2.The District Collector and District Magistrate,
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