



H.C.P.No.2229 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2229 of 2023

Malarkodi

... Petitioner

Vs.

1.The State of Tamil Nadu

Represented by the Secretary to Government,
Prohibition and Excise Home Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Chennai Commissioner Office,
Chennai.

3.The Superintendent of Prison,
Central Prison,
Cuddalore Prison,
Cuddalore District.

4.The Inspector of Police,
D-4, Zam Bazar Police Station,
Chennai.

... Respondents



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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 relating to the detention order dated 02.08.2023 passed by the second respondent in the proceedings in No.345/BCDFGISSSV/2023 in respect of TPDA No.4030 and to quash the same, consequently direct the respondents herein to produce the the petitioner's son namely Thiru.Azhaguraja, Son of Sekar (late) aged about 24 years residing at No.24/9, Subramaniya Thottam Street, Thiruvallikeni, Chennai, who is presently undergoing detention in Central Prison, Cuddalore as “GOONDA” under section 3(1) of the Tamilnadu 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) before this Court and set him at liberty forthwith.

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



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ORDER

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

The petitioner, mother of the detenu Azhaguraja, S/o.Sekar @ Thottam Sekar (late), aged about 24 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 02.08.2023 slapped on 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 grounds are raised in the petition, the learned counsel for the petitioner pointed out that, in the Grounds of Detention, the Detaining Authority has observed that the Sponsoring Authority has stated that he came to understand that one Saravanan's relatives are taking steps to take him out on bail. However, the name of the detenu herein is Azhaguraja.



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Therefore, the subjective satisfaction of the Detaining Authority by forming an opinion that the detenu is likely to be released on bail, by relying upon the statement of the relatives of an unknown person, suffers from non-application of mind and hence, the Detention Order is vitiated.

4.On a perusal of the Grounds of Detention, this Court finds that, at Para No.4, the Detaining Authority has observed that *“The sponsoring authority has stated that he came to understand that Thiru.Saravanan's relatives are taking steps to take him out on bail in D-4 Zam Bazaar Police Station in Cr.No.136/2023 case by filing bail application before the appropriate Court.”* However, the name of the detenu in the present case is Azhaguraja, which is referred to even in the same paragraph of the Grounds of Detention. The statement of the Sponsoring Authority that steps are being taken by the relatives of one Saravanan to take him out on bail has no relevance to the case on hand. The subjective satisfaction of the Detaining Authority by forming an opinion that the detenu in the present case is likely to be released on bail, based on such irrelevant statement, suffers from non-application of mind and the Detention Order is therefore, vitiated.



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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 the accused in a similar case, wherein, the said bail was granted mainly by citing Covid-19 Pandemic. 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 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."



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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.

7.In view of the aforesaid reason, the detention order passed by the 2nd respondent in No.345/BCDFGISSSV/2023, dated 02.08.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Azhaguraja, S/o.Sekar @ Thottam Sekar (late), aged about 24 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.)
18.12.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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Home, Prohibition and Excise Department,

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- 3.The Superintendent of Prison,
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Cuddalore District.
- 4.The Inspector of Police,
D-4, Zam Bazar Police Station,
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- 5.The Public Prosecutor,
High Court, Madras.



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