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HCP.No.293 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.293 of 2024

Latha,

...Petitioner/mother of detenu

Vs.

1.State of Tamil Nadu, represented by,
The Secretary to Government,
Department of Home, Prohibition and Excise,
Secretariat, Fort St.George,
Chennai.

2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai -7.

3.Superintendent of Prison,
Central Prison – Puzhal - II,
Puzhal, Chennai.

4.Inspector of Police,
M-3, Puzhal Police Station,
Chennai.

...Respondents



HCP.No.293 of 2024

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records in Memo No.615/BCDFGISSSV/2023 passed by the second respondent on 23.11.2023, on the file of the second respondent and quash the same as illegal and consequently, direct the respondent to produce petitioner son Gunasekaran @ Aruppu Guna, Son of Venkatesan aged about 23 years before this Court, who now confined in Central Prison, Puzhal – II, and set him at liberty.

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

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

The petitioner herein, who is the mother of the detenu viz., Gunasekaran @ Aruppu Guna, S/o. Venkatesan aged about 23 years, who is detained at Central Prison, Puzhal - II, has come forward with this petition challenging the detention order passed by the second respondent dated 23.11.2023 slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders,



HCP.No.293 of 2024

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, as well as the learned Additional Public Prosecutor appearing for the respondents.

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. The Detaining Authority had relied upon an order passed in CrI.M.P.No.22719 of 2022 by this Court to infer that bail is likely to be granted to the detenu. However, on perusal of the order passed in CrI.M.P.No.22719 of 2022 dated 24.11.2022, this Court finds that there are two previous cases



HCP.No.293 of 2024

WEB COPY

against the accused therein and hence, the bail was granted to him, whereas, in the instant case, the detenu has six previous cases. Therefore, the said order relied upon by the Detaining Authority to infer that in similar cases bail has been granted, suffers from non application of mind, since the accused therein was not on a similar footing as that of the detenu. This issue is also covered by the Hon'ble Supreme Court in ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in **2011 [5] SCC 244**. The relevant observations are as follows:-

"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



HCP.No.293 of 2024

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."

5. 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.

6. In view of the aforesaid reason, the detention order passed by the second respondent dated 23.11.2023 in No.615/BCDFGISSSV/2023, is hereby



HCP.No.293 of 2024

set aside and the Habeas Corpus Petition is allowed. The detenu viz.,
Gunasekaran @ Aruppu Guna, aged 23 years, is directed to be set at liberty
forthwith unless he is required in connection with any other case.

[M.S.R., J] [S.M., J]
26.03.2024

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
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- 1.The Secretary to Government,
Department of Home, Prohibition and Excise,
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- 2.The Commissioner of Police,
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HCP.No.293 of 2024

4.The Inspector of Police,
M-3, Puzhal Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP.No.293 of 2024

M.S.RAMESH, J.
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H.C.P.No.293 of 2024

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