



WEB COPY



H.C.P.No.59 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.59 of 2024

Preetha

...Petitioner/Wife of the Detenu

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police,
Detaining Authority,
Coimbatore City.
- 3.The Superintendent of Prison,
Coimbatore District, Coimbatore
4. The Superintendent of Prison,
Central Prison, Coimbatore
5. The Inspector of Police,
Law and Order, D-2,Selvapuram Police Station,
Coimbatore District.

...Respondents.



H.C.P.No.59 of 2024

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, in connection with the order of Detention passed by the second respondent dated 25.10.2023 in C.No. 69/G/IS/2023 against the petitioner's husband S.Khadar Basha, Male aged 28, S/o. Shahul, who is confined at Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.A. Gokulakrishnan
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

The petitioner, wife of the detenu S.Khadar Basha, aged 28 years, S/o. Shahul Hameed, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 25.10.2023 slapped on her husband, branding him as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982.



H.C.P.No.59 of 2024

2. Heard the learned counsel for the petitioner and 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. In paragraph No.7 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 present detenu and relied upon an order passed by the Additional District Judge/Presiding Officer, Special Court for EC Act Cases, Coimbatore in C.M.P.No.191 of 2023 dated 20.01.2023. On a perusal of the said order, this Court finds that the said order relates to release of the present detenu on bail u/s.167[2] of Cr.P.C., and not on merits. Therefore, it is not a similar case



H.C.P.No.59 of 2024

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.

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 him in a similar case in C.M.P.No.191 of 2023. However, the said bail was granted on the ground that detenu is entitled to statutory bail and not on merits 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. Hence, on the above grounds, the Detention Order is liable to be quashed.



H.C.P.No.59 of 2024

WEB COPY

6. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 25.10.2023 in C.No.69/G./IS/ 2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., S.Khadar Basha, aged 28 years, S/o. Shahul Hameed, 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]
01.03.2024

bga

Index : Yes / No

Neutral Citation : Yes / No



H.C.P.No.59 of 2024

To

WEB COPY

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Police,
Detaining Authority,
Coimbatore City.
3. The Superintendent of Prison,
Coimbatore District, Coimbatore
4. The Superintendent of Prison,
Central Prison, Coimbatore
5. The Inspector of Police,
Law and Order, D-2, Selvapuram Police Station,
Coimbatore District.
6. The Public Prosecutor,
High Court, Madras.
7. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



WEB COPY



H.C.P.No.59 of 2024

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

bga

-

H.C.P.No.59 of 2024

01.03.2024