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HCP.No.102 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM :

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

H.C.P.No.102 of 2024

Riddhi Bothra

... Petitioner / wife of the Detenue

Vs.

1.State represented by
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, St.George Fort,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai,
Commissioner Office Building,
Veppery, Chennai.

3.The Superintendent of Police,
Central Prison, Puzhal,
Chennai.

4.The Inspector of Police,
Forgery Investigation Wing, Team-33,
Central Crime Branch,
Chennai.

... Respondents



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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.564/BCDFGISSSV/2023 on the file of the second respondent, quash the order of detention dated 09.11.2023 and direct the production of the detainee detained in Central Prison, Puzhal, Chennai under the Act 14 of 1982 before this Court and set the detainee, Gagan Bothra, Male, aged 35 years, son of Mukun Chand Bothra at liberty.

For Petitioner	: Mr.John Sathyan Senior Counsel for Mr.P.Divakar
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 wife of the detenu viz., Gagan Bothra, aged 35 years, son of Mukun Chand Bothra, has come forward with this petition challenging the detention order passed by the second respondent dated 09.11.2023 slapped on her husband, branding him as



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

3. For the involvement of the detainee in a criminal case in Crime No.269 of 2022 dated 06.12.2022, the detaining authority had arrived at subjective satisfaction that if the detainee comes out on bail, he will further indulge in activities in the future which are prejudicial to the maintenance of public order, and therefore, there is a compelling necessity to pass the order of detention with a view to prevent them from indulging in such prejudicial activities. The ground case based on which the detention order was passed is admittedly more than 15 months old. The Hon'ble Supreme Court in the case of *Sama Aruna v. State of Telangana and Another*, reported in (2018) 12 SCC 150, had held that in cases where there is a



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considerable delay between the date of the ground case and the detention order, it has been held that such incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute. The observation of the Hon'ble Supreme Court reads as follows;

“22. We are of the view that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute.”

4. In the instant case for the involvement of the detenu in the ground case which occurred in the year 2022, the detention order has been passed after 15 months. By applying the ratio laid down by the Hon'ble Supreme Court in ***Sama Aruna's case*** [cited supra], we are of the view that the detention order is vitiated.



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5. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 09.11.2023 in No.564/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Gagan Bothra, aged 35 years, son of Mukun Chand Bothra, 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]
19.03.2024

Index: Yes/No
Anu

To
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, St.George Fort,
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2.The Commissioner of Police,
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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

Anu

4.The Inspector of Police,
Forgery Investigation Wing, Team-33,
Central Crime Branch,
Chennai.

5.The Public Prosecutor,
High Court, Madras.

6.The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.

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