



WEB COPY



HCP.No.588 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM :

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

H.C.P.No.588 of 2024

Sumathy

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
Vepery,
Chennai – 600 077.

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

4.The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai District.

... Respondents



HCP.No.588 of 2024

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records, relating to detention order vide Memo No.65/BCDFGISSSV/2024 dated 30.01.2024 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's son namely Nandhakumar @ Nandha, Male, aged about 27 years, S/o.Mari @ Thomas, (who is presently undergoing detention in the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.N.Arun Kumar

For Respondents : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

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

The petitioner herein, who is the mother of the detenu namely Nandhakumar @ Nandha, aged about 27 years, S/o.Mari @ Thomas, has come forward with this petition challenging the detention order passed by the second respondent dated 30.01.2024 slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders,



HCP.No.588 of 2024

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 grounds are raised in the petition, the learned counsel for the petitioner pointed out that the Detaining Authority has not applied its mind while expressing its subjective satisfaction that the detainee is also likely to be released on bail. It is his submission that the case relied upon by the Detaining Authority is not similar to the present case, as the bail was granted in favour of the accused therein by recording the fact that one previous case is pending against the accused therein.

4. On a perusal of the Booklet, this Court finds that the bail order relied upon by the Detaining Authority in CrI.M.P.No.19198 of 2021, is not similar to the case on hand since the accused therein was granted bail after recording the fact that one previous case was pending against the accused therein. However, as per the detention order, it is seen that there are four



HCP.No.588 of 2024

previous cases as against the detainee herein. Considering the nature of the bail order in the similar case relied upon by the Detaining Authority and the case on hand, this Court finds that the subjective satisfaction of the Detaining Authority that the detainee is also likely to be released on bail, suffers from non-application of mind.

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. 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 paragraph Nos.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



HCP.No.588 of 2024

WEB COPY

7. Accordingly, the detention order passed by the second respondent on 30.01.2024 in No.65/BCDFGISSSV/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Nandhakumar @ Nandha, Male, aged about 27 years, S/o.Mari @ Thomas, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J]

[S.M., J]

19.06.2024

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

Sni



HCP.No.588 of 2024

To
WEB COPY

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
Vepery,
Chennai – 600 077.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai District.
- 4.The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai District.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP.No.588 of 2024

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

Sni

H.C.P.No.588 of 2024

19.06.2024