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H.C.P.No.2176 of 2023

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.2176 of 2023

Vanitha

...Petitioner

Vs.

1.State of Tamil Nadu,
Represented by the Additional Chief 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,
Vepery, Chennai 600 007.

3.The Superintendent of Prison,
Central Prison, Coimbatore 641 018

4.The Inspector of Police,
J-9, Thuraipakkam Police Station,
Chennai

...Respondents.

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution

Page 1 of 7



H.C.P.No.2176 of 2023

of India praying for the issuance of a Writ of Habeas Corpus, calling for the records relating to the detentiion order in Memo No.382/BCDFGISSSV/2023, dated 31.08.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the detenu, Balamurugan @ Madurai Bala, S/o.Moorthi, aged about 32 years, the detenu, now confined in Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.P. Vishnu Prasad

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 Balamurugan @ Madurai Bala, aged about 32 years, S/o.Moorthi, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 31.08.2023 slapped on her husband, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.



H.C.P.No.2176 of 2023

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.4 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 detenu therein and relied upon an order passed by the learned Principal Sessions Judge, Chennai, in CrI.M.P.No.19198 of 2021 dated 27.10.2021. On a perusal of the said order, this Court finds that bail was granted to the accused therein since major portion of the investigation was completed and the injured was also discharged from the hospital. It is not so in the present



H.C.P.No.2176 of 2023

case. Therefore, it is not a similar case 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 Crl.M.P.No.19198 of 2021. However, the said bail was granted on the ground that major portion of the investigation was completed and the injured was also discharged from the hospital. 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



H.C.P.No.2176 of 2023

above grounds, the Detention Order is liable to be quashed.

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6. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 31.08.2023 in BCDFGISSSV No.382/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Balamurugan @ Madurai Bala, aged 32 years, S/o. Moorthi, 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

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Index : Yes / No

Neutral Citation : Yes / No



H.C.P.No.2176 of 2023

To

WEB COPY

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department,
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2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai 600 007.
3. The Superintendent of Prison,
Central Prison, Coimbatore 641 018
4. The Inspector of Police,
J-9, Thuraipakkam Police Station,
Chennai.
5. The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



WEB COPY



H.C.P.No.2176 of 2023

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

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H.C.P.No.2176 of 2023

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