



H.C.P.No.2159 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2159 of 2023

Saravanan

...Petitioner/Father of the Detenu

Vs.

1.The State of Tamil Nadu,
Represented by its Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George, Chennai – 600 009.

2.The Commissioner of Police,
Detaining Authority,
Tiruppur City.

3.The Superintendent of Prison,
Central Prison – Coimbatore,

4.State rep. by its
The Inspector of Police,
Veerapandi Police Station,
Tiruppur District.

...Respondents.

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



H.C.P.No.2159 of 2023

of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records of the 2nd respondent, in his proceeding in C.No.62/D.O./IS/Tiruppur City/2023 dated 29.09.2023 to quash the same and consequently direct the respondents to produce the detenu, Saran, S/o.Saravanan, aged about 20 years now confined in Central Prison, Coimbatore, and set him liberty forthwith.

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

ORDER

(Order of the Court was made by **SUNDER MOHAN, J.**)

The petitioner, father of the detenu Saran, aged 20 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 29.09.2023 slapped on his son, branding him as "Drug Offender" 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].



H.C.P.No.2159 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, an interim bail was granted to the detenu therein and relied upon an order passed by the Special Court of Essential Commodities Act Cases, Coimbatore, in Spl.C.M.P.No.115/2020. On a perusal of the said order in page No.37 (volume-2) of the Booklet, this Court finds that the said order relates to release of the accused 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.2159 of 2023

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 an interim bail order granted to an accused in a similar case in Spl.C.M.P. No.115/2020. However, the said bail was granted on the ground that accused 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.2159 of 2023

6. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 29.09.2023 in C.No.62/D.O./IS/Tiruppur City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Saran, S/o. Saravanan, aged 20 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]
05.02.2024

bga

Index : Yes / No

Neutral Citation : Yes / No

To

- 1.The State of Tamil Nadu,
Represented by its Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Detaining Authority, Tiruppur City.
- 3.The Superintendent of Prison,
Central Prison – Coimbatore,
- 4.State rep. by its
The Inspector of Police,
Veerapandi Police Station, Tiruppur District.
- 5.The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary,
Law and Order Department, Secretariat, Chennai.

Page 5 of 6



WEB COPY



H.C.P.No.2159 of 2023

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

bga

H.C.P.No.2159 of 2023

05.02.2024