



H.C.P.No.2332 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2332 of 2023

R. Jothimani

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 9.

2. The Commissioner of Police,
Salem City.

3. The Inspector of Police,
Ammamet Police Station,
Salem District.

4. The Superintendent,
Central Prison, Salem.

... Respondents



H.C.P.No.2332 of 2023

Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the 2nd respondent on 19.10.2023 in C.M.P. No.96/Goonda/Salem City/2023, and to quash the same and direct the respondents to produce the body of the detenu Gubendiran, aged about 63 years, S/o. Krishnasamy Naidu, 102/42, Periya Kinaru Street, Ammapet, Salem, before this Court and set him at liberty, now detained at Central Prison, Salem.

For petitioner : Mr.C. Iyyappa Raj

For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind,C.

ORDER

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

This Petitioner is the wife of the detenu, who has been detained by the second respondent in connection with order in C.M.P. No.96/Goonda/Salem City/2023, dated 19.10.2023, holding him to be a "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



H.C.P.No.2332 of 2023

2. The learned counsel for the petitioner submitted that page 5 of Volume-2 of the booklet furnished by the detaining authority is illegible and therefore, the detenu's right to make effective representation has been denied. The learned counsel further submitted that the detention order is liable to be quashed on the 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 05.01.2021 in C.M.P. No.1438 of 2020 on the file of the Judicial Magistrate No.5, Salem, granted to the accused in a similar case, suffers from non-application of mind, as the accused in the similar case was granted bail only on health grounds and not on merits.

3. On a perusal of the booklet, we find that there is force in the submission made by the learned counsel for the petitioner. Page No.5 of the booklet is illegible and therefore the right of the detenu to make effective representation has been denied. Further, as rightly contended by the learned counsel for the petitioner, the bail order relied upon by the detaining authority to arrive at the subjective satisfaction that this detenu is likely to be released on bail cannot be said to be similar. In that case the bail was



H.C.P.No.2332 of 2023

granted to this accused on health grounds. Therefore, the subjective satisfaction of the detaining authority that the detenu is likely to be released on bail suffers from non application of mind, which would vitiate the order of detention.

4. In view of the above discussions, the detention order is liable to be quashed. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.M.P. No.96/Goonda/Salem City/2023, dated 19.10.2023, passed by the second respondent is set aside. The detenu, namely, Gubendiran, aged 63 years, is directed to be released forthwith unless his detention is required in connection with any other case.

(M.S.R., J.) (S.M., J.)

05.01.2024

Index : Yes / No

bga



H.C.P.No.2332 of 2023

To

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 9.
2. The Commissioner of Police,
Salem City.
3. The Inspector of Police,
Ammamet Police Station,
Salem District.
4. The Superintendent,
Central Prison, Salem.



WEB COPY



H.C.P.No.2332 of 2023

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

bga

H.C.P.No.2332 of 2023

05.01.2024