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H.C.P.No.2276 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2276 of 2023

Nithiya Kalyani

... Petitioner

Vs.

1.State of Tamil Nadu represented
By Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police Greater,
Chennai.

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

4.State Rep. by Inspector of Police,
V-7, Nolambur Police Station,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying
to issue Writ of Habeas Corpus, calling for the records of the second



H.C.P.No.2276 of 2023

respondent pertaining to the order made in Memo No.392/BCDFGISSSV/2023, dated 11.09.2023 in detaining the detenu under the Tamilnadu Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely Jaiganesh, S/o.Diwakar, aged 24 years who is detained at the Central Prison Puzhal, Chennai before the Hon'ble Court and set him at liberty.

For petitioner : Mr.S.Karthick

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

ORDER

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

The petitioner, mother of the detenu Jaiganesh aged 24 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 11.09.2023 slapped on his son, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



H.C.P.No.2276 of 2023

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. The Detaining Authority had relied upon an order dated 30.01.2023, passed in CrI.M.P.No.2054 of 2023, by the learned learned Principal Sessions Judge, Chennai, to infer that bail is likely to be granted to the detenu. However, on perusal of the order passed in CrI.M.P.No.2054 of 2023, this Court finds that there is only one previous case against the accused therein and hence, the bail was granted to him, whereas, in the instant case, the detenu has three previous cases. Therefore, the said order relied upon by the Detaining Authority to infer that in similar cases bail has been granted, suffers from non application of mind, since the accused therein was not on a similar footing as that of the detenu. This issue is also covered by the Hon'ble Supreme Court in ***Rekha Vs. State of Tamil Nadu***



through Secretary to Government and Another reported in 2011 [5] SCC

244. The relevant observations are as follows:-

"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 passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent



possibility of the accused coming out on bail and there was no reliable material to this effect. Hence, the detention order in question cannot be sustained."

5. In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

6. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 11.09.2023 in Memo No.392/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Jaiganesh, S/o.Diwakar, aged 24 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]
19.01.2024

bga

Index : Yes / No

Neutral Citation : Yes / No



H.C.P.No.2276 of 2023

To

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- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Cuddalore District at Cuddalore.
- 3.The Superintendent of Police,
Cuddalore District.
- 4.The Superintendent,
Central Prison Cuddalore,
Cuddalore.
- 5.State Rep. by Inspector of Police,
Reddichavadi Police Station,
Reddichavadi, Cuddalore District.
- 6.The Public Prosecutor,
High Court, Madras.
7. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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H.C.P.No.2276 of 2023

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

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H.C.P.No.2276 of 2023

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