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H.C.P.No.2333 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2333 of 2023

Sumathi

... Petitioner

Vs.

1.State rep by,
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Salem City.

3.The Superintendent of Prison,
Central Prison, Salem.

4.The Inspector of Police,
Shevapet Police Station,
Salem City.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Habeas Corpus, calling for the records C.M.P.No.73/Goonda/Salem City/2023 dated 28.07.2023 on the file of the Commissioner of Police, Salem City, the



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second respondent herein and quash the same as illegal and direct the respondent to produce the detenue, Dhanush, S/o. Rajendran aged about 21 years, now confined at Central Prison Salem, before this Court and set him at liberty.

For Petitioner : Mr.S. Sengkodi

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

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

The petitioner herein is the mother of the detenu Dhanush, S/o.Rajendran, aged 21 years, has come forward with this petition challenging the detention order passed by the second respondent dated 28.07.2023 slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the



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respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner mainly contended that the Detaining Authority was swayed by the fact that the relative of the detenu is taking efforts to file a bail application and hence, it is submitted by the learned counsel for the petitioner that the subjective satisfaction that has been arrived at by the Detaining Authority at Paragraph No.4 of the order is not supported by any materials. Therefore, the same also suffers from non-application of mind.

4. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in ***2005 (2) LW 946 [K.Thirupathi Vs. District Magistrate and District Collector, Tiruchirappalli District & another].***

5. The learned Additional Public Prosecutor strongly opposed the Habeas Corpus Petition by filing his counter.



6. The Detaining Authority has considered the fact that the relative of the detenu is taking efforts to file a bail application before the competent Court. Therefore, the Detaining Authority came to the conclusion that there is an imminent possibility of the detenu coming out on bail.

7. The satisfaction that has been arrived at by the Detaining Authority is merely on surmises and it is not based on any materials that has been placed before the Detaining Authority. At this point of time, it will be relevant to take note of the Full Bench judgment, which has been referred to supra. The relevant portions of the judgment are extracted hereunder:

..... “24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu



being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with [Article 22](#) of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him--

(a) that there is a real possibility of his being released on bail, and

(b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted



notwithstanding such opposition to question it before a higher Court.

28. It is neither possible nor advisable catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. That is why there is no provision in the Act in that regard and the matter is left to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.”

8. It is clear from the above that the detenu is in custody and he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it was merely on the presumption made by the Detaining Authority, the same reflects non-application of mind on the part of the Detaining Authority.

9. In view of the above, the detention order suffers from non-application of mind and the same is liable to be interfered with by this Court. The impugned detention order is, therefore, liable to be quashed.



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10. Accordingly, the detention order passed by the second respondent, in C.M.P.No.73/Goonda/Salem City/2023, dated 28.07.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Dhanush, S/o. Rajendran, aged 21 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]
03.01.2024**

Index: Yes/No
Speaking/Non-speaking order

Sni

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Salem City.

3.The Superintendent of Prison,
Central Prison, Salem.

4.The Inspector of Police,
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5.The Public Prosecutor,
High Court, Madras.



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