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H.C.P.No.45 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.45 of 2024

Devanathan

... Petitioner

Vs.

1.State of Tamilnadu represented

By 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.

... Respondents



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Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records of the second respondent pertaining to the order made in No.C3/D.O/13/2023 dated 30.05.2023 in detaining the detenu under the Tamilnadu Act 14/1982 as a Goondas and quash the same and direct the respondents to produce the detenu namely Partha @ Parthasarathy, Male, aged about 28 years, S/o.Devanathan who is detained at the Central Prison, Cuddalore before this Hon'ble Court and set him at liberty.

For petitioner : Mr.B.Balamurugan

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.**)

The petitioner, father of the detenu Partha @ Parthasarathi, aged 28 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 30.05.2023 slapped on his son, branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.



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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.5 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 dated 02.06.2021 passed by the Judicial Magistrate No.III. Cuddalore, in C.M.P.No.364/2021 . On a perusal of the said order in page No.165 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 and the subjective satisfaction of



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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 an accused in a case in C.M.P.No.364/2021. 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.



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6. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 30.05.2023 in C3/D.O./13/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Partha @ Parthasarathi, S/o. Devanathan, aged 28 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]
18.01.2024

bga

Index : Yes / No

Neutral Citation : Yes / No



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- 6.The Public Prosecutor,
High Court, Madras.
7. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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

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