



H.C.P.No.963 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-09-2025

CORAM:

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

AND

THE HONOURABLE MR. JUSTICE S. SOUNTHAR

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Ganesan

S/o Varadharaja

... Petitioner

Vs.

1. The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Police/Detaining Authority,
Greater Chennai,
Vepery, Chennai.

3. The Superintendent, Central Prison,
Puzhal, Chennai - 600 066

4. The Inspector of Police/ Sponsoring Authority,
Prohibition Enforcement Wing,
St.Thomas Mount Unit.

... Respondents

PRAYER: The Habeas Corpus Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus, to call for records relating to the detention order in memo No.246/BCDFGISSSV/2025 dated 07.05.2025 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the body and person of the



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petitioner named Ganesan S/o Varadharaja, male, aged 47 years, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.K.Anandha Raja

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

J.Nisha Banu,J.
and
S.Sounthar,J.

The petitioner herein, who is the detenu, viz., Ganesan, aged 47 years, S/o Varadharaja, has come forward with this petition challenging the detention order passed by the second respondent in BCDFGISSSV No.246/2025 dated 07.05.2025, 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] read with the order issued by the Government in G.O.(D).No.97 Home Prohibition and Excise (XVI) Department dated 11.04.2025 under sub section (2) of Section 3 of the said Act.

2. We have heard the learned counsel appearing for the petitioner



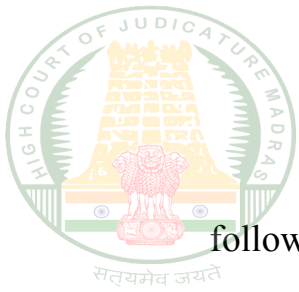
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and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the petition, the learned counsel for the petitioner submitted that subjective satisfaction arrived at by the detaining authority suffers from non-application of mind as there is no compelling necessity to detain him in order to prevent him from indulging in such further activities when the bail petition filed by the detenu is pending.

4. It is seen from the grounds of detention that the detaining authority has referred to the bail petition moved by the detenu, which is pending. However, it is observed further that there is very likely of his coming out on bail. Learned counsel for the petitioner have also state that the petitioner was arrested on 06.04.2025 and the detention order was passed only on 07.05.2025. Hence, there is a delay in passing the order of detention. Therefore, the detention order is liable to be quashed.

5. In paragraph 5 of the grounds of detention, it is stated as



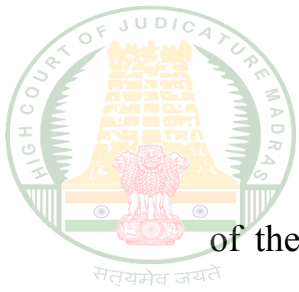
follows:

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'5. I am aware that Thiru.Ganesan is in remand in Prohibition Enforcement Wing, St.Thomas Mount Unit Crime No.84/2025 and he has moved a bail application for Prohibition Enforcement Wing, St.Thomas Mount Unit Crime No.84/2025 before the Court of Principal Sessions Judge for Essential Commodities and Narcotic Drugs and Psychotropic Substances Act, Chennai in Crl.M.P.No.2121/2025 and the same is pending. Further, in a similar case registered at D-1 Triplicane PS.Cr.No.932/2020 u/s.8(c) r/w 20(b)(ii)(B) Nrcotic Drugs and Psychotropic Substances Act, 1985, bail was granted to the accused Thiru.Rakesh by the Hon'ble Principal Special Court under Essential Commodities and Narcotic Drugs and Psychotropic Substances Act, Chennai, in Crl.M.P.No.1842/2020. Hence, I infer that it is very likely of his coming out on bail in Prohibition Enforcement Wing , St.Thomas Mount Unit Crime No.84/2025 case, since in similarly placed case bail, was granted by the Court after a lapse of time. If he comes out on bail, he will further indulge in such activities, which is be prejudicial to the maintenance no public health and public order.....

6. The facts narrated in the grounds of detention would show that the detenu has not involved in any adverse case. Insofar as the ground case is concerned, the detenu moved a bail petition before the Principal Sessions Judge for Essential Commodities and Narcotic Drugs and Psychotropic Substances Act, Chennai in Crl.M.P.No.2121/2025 and the same is pending.

7. At this juncture, it would be appropriate to refer to the judgment



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of 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, wherein it is held 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.”



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8. In the present case, the detenu has moved a bail petition in the ground case before the Principal Sessions Judge for Essential Commodities and Narcotic Drugs and Psychotropic Substances Act, Chennai and the same is pending. When that being so, the subjective satisfaction arrived at by detaining authority that there is very likely of the detenu coming out on bail is without any basis and is a mere *ipse dixit* of the detaining authority. Further, the learned Additional Public Prosecutor did not dispute that the petitioner was arrested on 06.04.2025 and the order of detention was passed only on 07.05.2025 and there is a delay of one day in passing the detention order. There is also no satisfactory explanation offered by the Detaining Authority for the delay in passing the order of detention.

9. As regards the delay in passing the detention order, the said issue is covered by the ratio laid down by the decision of the Hon'ble Supreme Court in the case of *Sushanta Kumar Banik Vs. State of Tripura*', reported in '2022 LiveLaw (SC) 813'. The relevant portion of the said judgment of the Hon'ble Supreme Court is extracted hereunder:-

“20. It is manifestly clear from a conspectus of the



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above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

Therefore, following the aforesaid judgments of the Hon'ble Supreme Court, the impugned order passed by the 2nd respondent is liable to be set aside.

10. Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent respondent in BCDFGISSSV No.246/2025 dated 07.05.2025, is hereby set aside. The detenu, viz., Ganesan, S/o Varadharaja, aged 47 years, who is now confined in the Central Prison, Puzhal, Chennai, is hereby directed to be set at liberty forthwith unless his presence is required in connection



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with any other case.

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(J.NISHA BANU, J.) (S. SOUNTHAR, J.)

11-09-2025

vsi

To

1. The Additional Chief Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police/Detaining Authority,
Greater Chennai,
Vepery, Chennai.
3. The Superintendent, Central Prison,
Puzhal, Chennai - 600 066
4. The Inspector of Police/ Sponsoring Authority,
Prohibition Enforcement Wing,
St.Thomas Mount Unit.
5. The Central Prison,
Puzhal, Chennai
6. The Public Prosecutor,
High Court of Madras, Chennai.



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