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H.C.P.No.1139 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1139 of 2023

G.Amul
W/o Gopi

..

Petitioner

v.

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

2. The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai

3. The Superintendent of Prison
Central Prison
Chennai

4. The Inspector of Police
G1, Vepery Police Station
Chennai

..

Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed by the second respondent in his proceedings in No.177/BCDFGISSSV/2023 dated 17.05.2023 and quash the same as illegal and produce the detenu, namely, Prasanth @ Tyson, S/o Gopi, aged 23 years, now he is confined in Central Prison-II, Puzhal, Chennai.

For Petitioner :: Mr.C.Raja

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

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

The petitioner, who is the mother of the detenu, namely, Prasanth @ Tyson, aged 23 years, S/o Gopi, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 17.05.2023 slapped on her son, branding him as 'Goonda' under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic



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Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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

3. Though several grounds are raised in the petition, the learned counsel appearing for petitioner submitted that the detention order is liable to be set aside on the sole ground that the subjective satisfaction of the detaining authority regarding the possibility of the detenu coming out on bail in the ground case, suffers from non-application of mind, as he has not moved any bail application in the ground case and is a mere ipse dixit without any material.

4. We are convinced with the statement of the learned counsel for the petitioner. In paragraph-4 of the grounds of detention, the detaining authority has referred to the fact that the detenu has not moved any bail application in Crime No.118 of 2023 concerning the ground case. But it was



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further recorded that the sponsoring authority has informed that the relative of the detenu were taking steps to take him out on bail in Vepery Police Station Crime No.118 of 2023. Therefore, the subjective satisfaction of the detaining authority suffers from non-application of mind, as no other order in similar case is even referred to in the grounds of detention and is a mere ipse dixit without any material.

5. The Hon'ble Supreme Court in the case of ***Rekha v. State of Tamil Nadu through Secretary to Government and another, (2011) 5 SCC 244***, has held that 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. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble Supreme Court held that the order of detention is liable to be quashed. It is relevant to extract paragraph Nos.10 and 11 of the said judgment of the Hon'ble Supreme Court, 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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In view of the position of law enunciated by the Hon'ble Supreme Court in Rekha's case, this Court finds that the impugned order of detention is vitiated and is liable to be quashed.

6. Accordingly, the detention order passed by the 2nd respondent dated 17.05.2023 in No.177/BCDFGISSSV/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Prasanth @ Tyson, S/o Gopi, aged 23 years, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : yes/no

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

(S.M.,J.)

Neutral citation : yes/no

08.11.2023

ss

To

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Home, Prohibition and Excise Department
Fort St.George
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High Court, Madras



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SUNDER MOHAN,J.

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