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H.C.P.No.1147 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1147 of 2023

Botharaja

... Petitioner

Vs.

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

2.District Collector and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.

3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.

4.The Superintendent of Prison,
Central Prison, Vellore-2.

5.The Inspector of Police,
Kadaladi Police Station,
Tiruvannamalai District.

... Respondents



H.C.P.No.1147 of 2023

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 19.06.2023 D.O.No.63/2023-C2, petitioner/detenu Botharaja, Male aged 33 years, S/o.Sundaram, who is confined at Central Prison, Vellore and set aside the same and direct the respondent to produce the detenu before the Honble Court and set him at liberty.

For Petitioner : Mr.D.Balaji
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Aravind C.

ORDER

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

The petitioner, namely Botharaja, aged 33 years, S/o.Sundaram, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 19.06.2023 slapped on him, branding him as "Bootlegger" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic



H.C.P.No.1147 of 2023

Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982

WEB COURT [Tamil Nadu Act 14 of 1982].

2.Heard the learned counsel 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 for the petitioner pointed out that the Detaining Authority has not applied his mind while expressing his subjective satisfaction that the detenu is also likely to be released on bail. It is his submission that the case relied upon by the Detaining Authority is not similar to the present case, as the bail was granted in favour of the accused therein based on the No Objection given by the Public Prosecutor.

4.On a perusal of the Booklet, this Court finds that the bail order relied upon by the Detaining Authority in Crl.M.P.No.2206 of 2015, dated 03.07.2015, is not similar to the case on hand, since the accused therein was granted bail after recording the fact that the prosecution was not having any



H.C.P.No.1147 of 2023

objection. Therefore, this Court finds that the subjective satisfaction of the Detaining Authority that the detenu is also likely to be released on bail based on the similar case relied upon by him, suffers from non-application of mind.

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. 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 paragraphs No.10 and 11 of the said judgment of the Hon'ble Supreme Court:-

“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."

6. 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



H.C.P.No.1147 of 2023

is liable to be quashed.

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7. Accordingly, the detention order passed by the 2nd respondent in D.O.No.63/2023-C2, dated 19.06.2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Botharaja, aged 33 years, S/o.Sundaram, is directed to be set at liberty forthwith unless he is required in connection with any other case.

(S.S.S.R., J.) (S.M., J.)
20.11.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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Page 6 of 8



H.C.P.No.1147 of 2023

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6.The Public Prosecutor,
High Court, Madras.



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H.C.P.No.1147 of 2023

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and
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H.C.P.No.1147 of 2023

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