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HCP.No.1276 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.1276 of 2023

S.Sudha .. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 9.

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

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
G5 Secretariat Colony Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for 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 BCDFGISSSV No.269/2023 dated 27.06.2023 and quash the same as illegal and produce the detenu namely Sharma, S/o.Sasikumar aged 25 years now he is confined in Central Prison, Puzhal II, Chennai before this Court and set him at liberty.



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

ORDER

[Order of the Court was made by **S.S.SUNDAR, J.**]

The petitioner, mother of the detenu Sharma, has come forward with this petition challenging the detention order passed by the second respondent dated 27.06.2023 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 Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [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 points have been raised by the petitioner, learned counsel for the petitioner submitted that there is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction that the detenu is likely to be



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released on bail in the ground case as the order dated 24.08.2021 passed in the similar case in Crl.M.P.Nos.13436 and 13772 of 2021 by the learned Principal Sessions Judge, Chennai, is not similar to the present case. Learned counsel pointed out that the learned Judge while granting bail to the accused in the similar case, had taken note of the fact that the accused therein has got no previous case whereas, the detenu herein has got one previous case. Hence, the said case cannot be compared to the case of the detenu.

4. This Court, upon examination of the records, is unable to discard the said contention of the learned counsel for the petitioner. From a perusal of the Booklet, in particular, page Nos.121 and 122, it is seen that the Detaining Authority has relied upon the bail order in Crl.M.P.Nos.13436 and 13772 of 2021 granted to the accused therein, to arrive at the subjective satisfaction that the detenu herein is likely to be released on bail in the ground case. However, it is to be pointed out that the learned Judge while granting bail in Crl.M.P.Nos.13436 and 13772 of 2021 has particularly recorded the fact that the accused therein has got no previous case whereas, the detenu herein has got one previous case. The Detaining Authority has not taken into



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consideration this vital aspect, while arriving at the subjective satisfaction. Hence, the subjective satisfaction of the Detaining Authority 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 considered a case where it is stated that in the grounds of detention that relatives of detenu are taking action to take him on bail in the criminal case in which the detenu was in remand and that in similar cases, bail was granted by Courts. Since no details had been given about the alleged similar cases in which bail was allegedly granted by the Court concerned, it is held by Hon'ble Supreme Court that in the absence of details, the statement which is mere *ipse dixit*, cannot be relied upon and that itself is sufficient to 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



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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 is liable to be quashed.



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7. In view of the aforesaid reason, the detention order passed by the second respondent dated 27.06.2023 in No.269/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Sharma, S/o.Sasikumar, aged about 25 years, 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.]
27.11.2023

Index:Yes/No
Neutral Citation:Yes/No
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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
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- 2.The Commissioner of Police,
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5.The Public Prosecutor
High Court, Madras.

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**S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,**

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