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HCP.No.1349/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1349/2023

Ajith

Versus

.. Petitioner

1.The Principal Secretary to the Government
Home, Prohibition & Excise [XVI] Department
Fort St George, Secretariat, Chennai 600 009.

2.The District Magistrate & District Collector
O/o.The District Collector, Erode District.

3.The Superintendent of Police
O/o.The Superintendent of Police
Erode District.

4.The Superintendent of Prison
Central Prison at Coimbatore District.

5.The Inspector of Police
Erode North Police Station
Erode District.

.. Respondents



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Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records in detention order in No.Cr.MP.No.09/Goonda/2023-C1 dated 06.06.2023 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the body of the petitioner's brother/detenu Naveen @ Naveenkumr, son of Pappaiah, aged 23 years now confined in Central Prison at Coimbatore before this Court and set him at liberty.

For Petitioner : Mrs.R.Subadra Devi

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

ORDER

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

(1)The petitioner, brother of the detenu Naveen @ Naveenkumr, aged 23 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 06.06.2023 slapped on his brother, branding him as "Goonda" under the 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)The learned counsel for the petitioner though canvassed several points before this Court, this Court is able to find some force in his submission



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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 released on bail. In the Grounds of Detention, in particular, paragraph NO.5, it is stated by the Detaining Authority that the detenu is a remand prisoner in the 1st adverse case in Crime No.142/2023 and in the ground case in Crime No.174/2023. Further, in the very same paragraph, the Detaining Authority has stated that the detenu was granted bail in **Crime No.175/2023** by this Court in Crl.OP.No.11847/2023 on 06.06.2023. However, the detenu is arrested in connection with the ground case in Crime No.174/2023 and not Crime No.175/2023. Crime No.175/2023 has nothing to do with the detenu. Further, the satisfaction recorded by the Detaining Authority that the detenu would be released on bail in Crime No.142/2023 is not supported by any material. It is a mere *ipse dixit*. The above facts indicates total non application of mind on the part of the Detaining Authority. This Court is convinced that there is no subjective satisfaction as no material is relied upon by the Detaining Authority as to how there is a possibility of the detenu coming out on bail in the 1st adverse case. It is admitted that bail was granted to the detenu



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in one case. However, no bail application is moved by him in the 1st adverse case. It is in the said circumstances, this Court finds merit in the submission of the learned counsel for the petitioner.

(4)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 similar situation wherein, 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 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



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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."

(5) In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid reason, this Court is of the view that the detention order is liable to be quashed.

(6) Accordingly, the detention order passed by the 2nd respondent dated



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06.06.2023 in Cr.MP.No.09/GOONDA/2023-C1 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu 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.]
07.11.2023

AP

Internet : Yes

To

- 1.The Principal Secretary to the Government
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- 2.The District Magistrate & District Collector
O/o.The District Collector, Erode District.
- 3.The Superintendent of Police
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- 5.The Inspector of Police
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Erode District.
- 6.The Public Prosecutor
High Court, Madras.



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

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