



HCP.No.1382/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1382/2023

Mageshkumar

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Petitioner

Versus

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St George, Chennai 600 009.
- 2.The District Collector & District Magistrate
Coimbatore, Coimbatore District.
- 3.The Superintendent of Police
Coimbatore, Coimbatore District.
- 4.The Superintendent of Prison
Central Prison, Coimbatore,
Coimbatore District.
- 5.The Inspector of Police
Mettupalayam Police Station
Coimbatore District.

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Respondents



HCP.No.1382/2023

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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 entire records relating to the petitioner's brother detention order under Tamil Nadu Act 14 of 1982 vide detention order dated 22.06.2023 on the file of the 2nd respondent made in proceedings Memo Cr.MP.No.23/G/2023 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely Surya, son of Balan, aged 21 years before this Court and set the petitioner's brother at liberty from detention now the petitioner's brother detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
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 has come forward with this petition challenging the detention order passed by the 2nd respondent dated 22.06.2023 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.



HCP.No.1382/2023

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(3) Though several points have been raised by the petitioner, the learned counsel for the petitioner raised the following points for consideration:-

- (a) The Arrest Intimation in the Ground Case has been furnished in English language and has not been translated in the vernacular language. The detenu has studied upto 7th standard only.
- (b) 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 ground case as the order passed in the similar case in CrI.MP.No.32244/2022 by the learned Judicial Magistrate No.1, Coimbatore, 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 investigation in the similar case was completed and charge sheet was filed. Whereas, it is not so in the case of the detenu.

Hence, it is stated that the detention order is liable to be quashed on the above grounds and the order of detention is vitiated on the ground of total non application of mind and non translation of the vital document depriving



HCP.No.1382/2023

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of the detenu from making effective representation against the detention order to the authorities concerned.

(4) This Court, upon examination of the records, is unable to discard any of the contentions of the learned counsel for the petitioner. A perusal of page No.90 of the Booklet would reveal that the English version of the Arrest Intimation Form in the ground case has not been translated in the vernacular language. This non furnishing of the vital document in vernacular language would deprive the detenu of making effective representation to the authorities against the order of detention.

(5) In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in ***Powanammal Vs. State of Tamil Nadu*** reported in ***(1999) 2 SCC 413***. The Hon'ble Supreme Court had occasion to deal with similar situation where in the Grounds of Detention referred to an order remanding the detenu therein to judicial custody was in English language. Since the tamil version of the document was not supplied to the detenue therein, a specific issue was raised by the Hon'ble Supreme Court whether failure to supply tamil version of the remand order passed in English, a language not known to the detenu therein, would vitiate the detenu's



HCP.No.1382/2023

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further detention. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22[5] of the Constitution, observed that the detenu should be afforded an opportunity of making representation effectively against the Detention Order and that, the failure to supply every material in the language which can be understood by the detenu, is imperative. In the said context, the Hon'ble Supreme Court has held in Paragraphs 9 and 16 as follows:

"9.However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference



HCP.No.1382/2023

in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

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16. *For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."*

(6) The second ground raised by the learned counsel for the petitioner is also substantiated. From a perusal of the Booklet, in particular, pages No.125 and 126, it is seen that the Detaining Authority has relied upon the said bail order in CrI.MP.No.32244/2022 granted to the accused therein, to arrive at the subjective satisfaction that the detenu herein is likely to be



HCP.No.1382/2023

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released on bail in the ground case. However, it is to be pointed out that the learned Judge while granting bail in CrI.MP.No.32244/2022 has particularly recorded the fact that the investigation was completed and charge sheet was filed against the accused therein. Whereas, it is not so in the present case. The Detaining Authority has not taken into consideration this vital aspect, while arriving at the subjective satisfaction. Hence, the subjective satisfaction of the Detaining Authority suffers from non-application of mind.

(7)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



HCP.No.1382/2023

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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.



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HCP.No.1382/2023

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."

(8) 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.

(9) Accordingly, the detention order passed by the 2nd respondent dated 22.06.2023 in Cr.MP.No.23/G/2023 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.

[SSSRJ] [SMJ]
21.11.2023

AP
Internet : Yes



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HCP.No.1382/2023

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Home, Prohibition and Excise Department
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- 6.The Public Prosecutor
High Court, Madras.



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HCP.No.1382/2023

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

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