



HCP.No.1431/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1431/2023

Anthony Prathap

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Petitioner

Versus

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9.
- 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
All Women Police Station
Tiruvannamalai Rural & District.

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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 to call for the records in connection with the order of detention passed by the 2nd respondent dated 30.06.2023 in DO.No.69/2023-C2 petitioner /detenu Anthony Prathap, male, aged 44 years, son of Mariyanathan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
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.]

- (1)The petitioner, detenu herein, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 30.06.2023 slapped on him, branding him as "Sexual Offender" 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)Though several grounds are raised in the petition, the learned counsel for the petitioner contended that the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely



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to be released on bail in the ground case, is not similar as the similar case relied on by the Detaining Authority in paragraph No.5 and the order furnished in page No.117 of the Booklet are entirely different. Hence, the similar case cited to arrive at the subjective satisfaction, is not similar and placing reliance on such order shows the non-application of mind on the part of the Detaining Authority.

(4) On a perusal of the Grounds of Detention, in particular, paragraph No.5, it is seen that the Detaining Authority had relied upon the order of bail in similar case in Cr.MP.No.1382/2013 for the offences u/s.376 and 506[ii] IPC, passed by the learned District and Sessions Judge, Tiruvannamalai on 10.05.2013. However, a perusal of the Booklet in page No.117, would reveal that the order passed by this Court in CrI.OP.No.20825/2012 for the offence under NDPS Act, has been enclosed. Therefore, the facts in the order relied upon by the Detaining Authority are not similar to the facts on hand. It is not known as to why such extraneous material is supplied in the Booklet. This is bound to confuse the detenu and deny the right to make effective representation. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining



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Authority to hold that the detenu is likely to be released on bail in the ground case by relying upon the said similar case, 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 case, 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:-



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

(7) Accordingly, the detention order passed by the 2nd respondent dated 30.06.2023 in DO.No.69/2023-C2 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.]
28.11.2023

AP
Internet: Yes



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- 5.The Inspector of Police
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- 6.The Public Prosecutor
High Court, Madras.



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

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