



HCP.No.1413/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1413/2023

A.Malar

Versus

.. Petitioner

- 1.State of Tamil Nadu
rep.by the Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
- 2.The District Magistrate & District Collector
Erode District, Erode.
- 3.The Superintendent of Police
Erode District, Erode.
- 4.The Superintendent of Prison
Central Prison, Coimbatore.
- 5.The Inspector of Police
Erode South Police Station
Erode.

.. 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 entire records from the 2nd respondent in connection with order CrI.MP.No.17/Goonda/2023/C1 dated 17.07.2023 and quash the same and produce the petitioner's brother namely Mani son of Late Mariyappan aged 37 years now confined in Central Prison, Coimbatore under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.P.Pugalenthir

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, sister of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 17.07.2023 slapped on her 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.



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(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 that there is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction. Learned counsel pointed out that the Detaining Authority has not specifically mentioned about the imminent possibility of the detenu coming out on bail in the ground case and he has not relied upon any similar case to arrive at the subjective satisfaction. He has merely stated *"Further, I am aware that he has moved bail petition in the above case before the Honourable Principal Sessions Judge, Erode and the same was dismissed at Criminal Miscellaneous Petition Number 2333/2023 dated 07.07.2023. However, I am aware that there is a real possibility of the bail would be granted to him in the above cases in future....."*. This statement of the Detaining Authority without any material, is mere *ipse dixit* and suffers from non application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

(4)From a perusal of the Grounds of Detention, in particular, paragraph



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No.5, it is seen that the subjective satisfaction arrived by the Detaining Authority, with regard to the imminent possibility of the detenu coming out on bail is not based on any materials and there is no reference to any similar cases to arrive at such subjective satisfaction. Further, the imminent possibility of the detenu coming out on bail in the ground case has not been specifically stated by the Detaining Authority. This subjective satisfaction of the Detaining Authority is mere *ipse dixit* and 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



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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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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.

(7) Accordingly, the detention order passed by the 2nd respondent dated 17.07.2023 in Cr.MP.No.17/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.]
12.12.2023

AP
Internet : Yes



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- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
- 2.The District Magistrate & District Collector
Erode District, Erode.
- 3.The Superintendent of Police
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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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