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H.C.P.No.1468 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1468 of 2023

Malarkodi

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai.

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

4.The Inspector of Police,
G-2, Periyamedu Police Station,
Chennai.

... Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the records relating to the Detention Order vide Memo No.256/BCDFGISSSV/2023 dated 26.06.2023, passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's son namely Jayaseelan son of Baskar, aged 31 years, (who is presently under going detention in the Central Prison, Puzhal), before this Court and set him at liberty.

For Petitioner	:	Mr.N.Arun Kumar
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, brother of the detenu , has come forward with this petition challenging the detention order passed by the 2nd respondent dated 26.06.2023 slapped on his brother, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand



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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 grounds are raised in this petition, the learned counsel for the petitioner focussed mainly on the ground that the subjective satisfaction arrived at by the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. In the Grounds of Detention, the Detaining Authority has simply observed that “*the Sponsoring Authority has stated that he came to understand that Thiru.Jayarajan @ Rajan's relative are taking steps to take him out on bail in G-2 Periyamedu Police Station Crime Nos.114/2023 and 115/2023 cases by filing bail applications before the appropriate Court*”. The Special Report of the Sponsoring Authority is not dated. Further, the statement of the relatives of the detenu that they are planning to file bail application to bring out the detenu on bail, is also not dated. Hence, the learned counsel for the petitioner raised a *bona fide* doubt as to when these statements were obtained from the relatives of the detenu and as to the date on which the



Special Report was sent by the Sponsoring Authority to the Detaining Authority. The learned counsel further pointed out that, unless the Special Report of the Sponsoring Authority is immediately before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the Detaining Authority based on these undated documents, would vitiate the Detention Order.

4.It is seen from records that the Special Report of the Sponsoring Authority is not dated. Further, the statements obtained by the Sponsoring Authority from the relatives of the detenu, enclosed in the Booklet, stating that they are planning to file bail application to bring out the detenu on bail, are also not dated. On a perusal of the Grounds of Detention, it is seen that, in Para No.4, the Detaining Authority has stated that the Sponsoring Authority has stated that he came to understand that the relatives of the detenu are taking steps to take him out on bail in the ground case by filing bail applications before the appropriate Court, and has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the statements obtained by the Sponsoring Authority from the relatives of the detenu stating that they are planning to file bail application to bring out



the detenu on bail, are not dated and even the Special Report of the Sponsoring Authority is not dated, the veracity of the Report becomes doubtful. The compelling necessity to detain the detenu would also depend on when the Sponsoring Authority has sent his Report. In the absence of the report, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective satisfaction arrived at by the Detaining Authority based on such undated materials, 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 dealt with a situation where the Detention Order is passed without an application of mind. In case, any of the reasons stated in the order of detention is non-existent or a material information is wrongly assumed, that will 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 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 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 in Memo.No.256/BCDFGISSSV/2023, dated 26.06.2023, 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.

(S.S.S.R., J.) (S.M., J.)
24.11.2023

mkn/AP

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Neutral Citation : Yes / No



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To

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- 5.The Public Prosecutor,
High Court, Madras.



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