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HCP.No.1485/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1485/2023

Nisha

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Petitioner

Versus

1.The State of Tamil Nadu rep.by its
Secretary to Government
Department of Prohibition and Excise [Home]
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Chennai City Police, Greater Chennai
Commissioner Office, Vepery
Chennai 600 007.

3.The Inspector of Police
J1 Saidapet Police Station
Chennai.

4.The Superintendent of Prison
Central Prison -II, Puzhal
Chennai.

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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 calling for the records in connection with the order of detention passed by the 2nd respondent made in No.304/BCDFGISSSV/2023 dated 11.07.2023 on the file of the 2nd respondent herein and set aside the same as illegal and produce the detenu Manikandan @ Sothupaanai, son of Perumal, aged about 29 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy
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, wife of the detenu herein, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 11.07.2023 slapped on her husband, 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)Though several grounds are raised in the petition, the learned counsel for the petitioner contended that the Detaining Authority has relied upon two



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similar cases to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the adverse cases and in the ground case.

However, it is submitted that the bail order in one of the similar cases, namely, **Crl.MP.No.377/2023**, was obtained by recording the fact that the accused therein had got only one previous case and that he was in judicial custody for more than 65 days. He also submitted that the bail order in the 2nd similar case, namely, **Crl.MP.No.2054/2023**, was granted on the ground that the co-accused to the accused therein was already released on bail and that placing reliance on such orders shows the non-application of mind on the part of the Detaining Authority.

(4) This Court, upon examination of the records, is unable to discard the contentions of the learned counsel for the petitioner. From a perusal of the Booklet, in particular, page.No.211, it is seen that the Detaining Authority has relied upon the bail order in Crl.MP.No.377/2023 granted to the accused therein, to arrive at the subjective satisfaction that the detenu herein is likely to be released on bail in the adverse cases and in the ground case. However, it is to be pointed out that the learned Judge while granting bail in Crl.MP.No.377/2023 has particularly recorded the



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fact that the accused therein was in judicial remand for more than 65 days and that the co-accused to the accused therein was released on bail. The case of the detenu herein is not similar to that of the case in Crl.MP.No.377/2023. Hence, it cannot be compared with.

(1) Further a perusal of page No.357, it is seen that the Detaining Authority has also relied upon another bail order in Crl.MP.No.2054/2023 passed by the learned Principal Sessions Judge, Chennai, granting bail to the accused therein, to arrive at the subjective satisfaction that the detenu herein is likely to be released on bail in the ground case. However, it is to be pointed out that the learned Judge while granting bail in Crl.MP.No.2054/2023 has particularly recorded the fact that the accused therein has got only one previous case. Whereas, the detenu herein has got two previous cases. The Detaining Authority has not taken into consideration these vital aspects, while arriving at the subjective satisfaction. Hence, the subjective satisfaction of the Detaining Authority 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



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[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:-

"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



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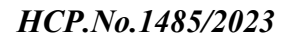
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(6) In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

(7) Accordingly, the detention order passed by the 2nd respondent dated 11.07.2023 in No.304/BCDFGISSSVS/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] [SM J]
01.12.2023

AP
Internet: Yes



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

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