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HCP.No.1548/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1548/2023

Preetha

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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 Officer, vepery
Chennai 600007.

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

4.The Inspector of Police
J1 Saidapet Police Station
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 No.325/BCDFGISSSV/2023 dated 21.07.2023 on the file of the 2nd respondent herein and set aside the same as illegal and produce the detenu Praveen @ Thotta Praveen son of Magesh, aged about 23 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Ms.M.Kokila for
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, sister of the detenu herein, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 21.07.2023 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) Though several points have been raised by the petitioner, the learned counsel for the petitioner submitted that 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.893/2017 by the learned XIV Metropolitan Magistrate, Egmore [Allikulam], Chennai, 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 not mentioned about any previous case pending against the accused therein explicitly. 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 ground of total non application of mind.

(4) This Court, upon examination of the records, is unable to discard the contention of the learned counsel for the petitioner. From a perusal of the Booklet, in particular, pages No.241 and 242, it is seen that the Detaining Authority has relied upon the bail order in CrI.MP.No.893/2017 granted to the accused therein, to arrive at the subjective satisfaction that the



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detenu herein is likely to be released on bail in the adverse case and in the ground case. From a reading of the said order, it is seen that the prosecution has reported that no previous case is identified against the accused as on the date of grant of bail and the involvement of the accused therein in any other crime and pendency of any other case against the accused has to be examined. Whereas, the detenu herein has got five adverse cases. 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.

(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



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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 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



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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."

(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 21.07.2023 in No.325/BCDFGISSSV/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]
14.12.2023

AP
Internet : Yes



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To

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Department of Prohibition and Excise [Home]
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S.S.SUNDAR, J.,

AND

SUNDER MOHAN, J.,

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