



HCP.No.1565/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1565/2023

Ramachandran

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Petitioner

Versus

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The District Magistrate and District Collector
Dharmapuri.
- 3.The Superintendent of Police
Dharmapuri.
- 4.The Superintendent of Prison
Central Prison, Salem.
- 5.The Inspector of Police
Dharmapuri Police Station
Dharmapuri.

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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 dated 03.07.2023 in SC.No.13/2023 against the petitioner's cousin Karthick @ Mariyappan, male, aged 29 years, son of Devadass who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
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, cousin of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 03.07.2023 slapped on his cousin, 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 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



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that the detenu is likely to be released on bail as the bail orders relied upon by him granted to the detenu in the adverse cases No.1 and 2 are not similar to the present case. Learned counsel pointed out that the Detaining Authority in the Grounds of Detention pointed out that the learned Judicial Magistrate No.1, Coimbatore, released the detenu on bail in the 1st adverse case in Cr.MP.No.5362/2022 on 23.03.2022. However, the said bail order has not been furnished in the Booklet. He also submitted that the detenu was granted bail in the 2nd adverse case by the learned Judicial Magistrate No.II, Poonamallee, particularly observing the fact that replies not received from the side of the prosecution. Hence, it is stated that the above bail orders granted to the detenu cannot be relied upon to arrive at the subjective satisfaction that the detenu will be released on bail in the other adverse cases and in the ground case and 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 contentions of the learned counsel for the petitioner. From a perusal of the Grounds of Detention, it is seen that the Detaining Authority has



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relied upon the bail orders granted to the detenu in the 1st and 2nd adverse cases, namely, in Crl.MP.No.5362/2022 and Crl.MP.No.6443/2022.

However, a perusal of the Booklet, in particular, page No.36, would reveal that the e-Court status of Crl.MP.No.5362/2022 has been furnished and the copy of the bail order has not been furnished to the detenu. Further, a perusal of page No.59[a] would also reveal that in the 2nd adverse case, the detenu herein was granted bail by the learned Judicial Magistrate No.2, Poonamallee, in Crl.MP.No.6443/2022 on 30.12.2022 by recording the fact that "*notice given to respondent police and Assistant Public Prosecutor and the replies not received.*" The above two orders were relied upon by the Detaining Authority to arrive at the subjective satisfaction that the detenu herein is likely to be released on bail in the ground case as well as in the other adverse cases. This subjective satisfaction of the Detaining Authority is nothing but *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



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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 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



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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.



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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 03.07.2023 in SC.No.13/2023 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]
29.11.2023

AP
Internet : Yes



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

To

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- 6.The Public Prosecutor
High Court, Madras.

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