



H.C.P.No.1702 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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K.Nataraj

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Prohibition & Excise,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police/Detaining Authority,
Coimbatore City,
Coimbatore.
- 3.The Superintendent of Central Prison,
Coimbatore.
- 4.The Inspector of Police,
E-3, Saravanampatti Police Station,
Coimbatore City,
Coimbatore.

... 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 in C.No.41/G/IS/2023, dated 17.04.2023, on the file of the 2nd respondent herein and Quash the Same as illegal and further direct the respondent to produce the detenu N.Sivaprasath, S/o.K.Nataraj, aged 24 years, now confined at Central Prison, Coimbatore, before this Honble Court and Set him at Liberty.

For Petitioner : Mr.S.Parthasarathi
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Aravind C.

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

The petitioner, father of the detenu N.Sivaprasath, S/o.K.Nataraj, aged 24 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 17.04.2023 slapped on his son, branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders,



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Goondas, Immoral Traffic Offenders, Sand 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 the petition, the learned counsel for the petitioner mainly focused on the ground that the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind, as the order relied upon by the Detaining Authority is not similar to the case on hand. Learned counsel for the petitioner pointed out that the similar case relied upon by the Detaining Authority is the bail order granted to the detenu in the adverse case, where the seized contraband was only 600 grams of Ganja.

4.On a perusal of the Booklet, this Court finds that, in the similar case relied upon by the Detaining Authority, i.e., bail order granted to the detenu in adverse case in CrI.M.P.No.3355 of 2022, dated 05.03.2022, the



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contraband seized was only 600 grams of Ganja. Further, in the other

adverse case also, the contraband seized was only 300 grams of Ganja.

However, the quantity of contraband seized in the ground case is 1.200 kg of Ganja. Therefore, the subjective satisfaction arrived at by the Detaining Authority on the basis of the said order that the detenu is likely to be released on bail, 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:-



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“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



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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 C.No.41/G/IS/2023, dated 17.04.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., N.Sivaprasath, S/o.K.Nataraj, aged 24 years, 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.)
13.12.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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To
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- 1.The Secretary,
Department of Prohibition & Excise,
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police/Detaining Authority,
Coimbatore City.
- 3.The Superintendent of Central Prison,
Coimbatore.
- 4.The Inspector of Police,
E-3, Saravanampatti Police Station,
Coimbatore City,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J.

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