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H.C.P.No.1586 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1586 of 2023

Lakshmi

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Sholinganallur,
Chennai – 119.

3.The Superintendent,
Central Prison,
Puzhal.

4.The Inspector of Police,
Tambaram Police Station,
Chennai – 45.

... 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 from the 2nd respondent in BCDFGISSSV No.15/2023 dated 04.04.2023 and to set aside the order of detention passed by the 2nd respondent and produce the detenu namely B.Saravanan @ Kuppa, S/o Babu aged 28 years now detained at Central Prison, Puzhal, and before this court and set him at liberty.

For Petitioner : Mr.S.Sairaman
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, mother of the detenu B.Saravanan @ Kuppa, S/o Babu aged 28 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 04.04.2023, slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas,



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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 submitted that there is total non-application of
mind by the Detaining Authority in the present case, as the observation of
the Detaining Authority that the relatives of the detenu are taking steps to
file bail application for the detenu, is not supported by any material and the
Special Report of the Sponsoring Authority, having reference to such fact, is
not dated.

4.Even though it is admitted that bail application was not filed by the
detenu in the ground case, the Detaining Authority has observed that the
relatives of the detenu are taking steps to file bail application for the detenu.
However, this observation is not supported by any material. Even though



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there is reference in the Special Report of the Sponsoring Authority about such a fact, there is no material to support the same. Further, the Special Report relied upon by the Detaining Authority is not dated. In such circumstances, this Court finds that the subjective satisfaction of the Detaining Authority suffers from non-application of mind and the statements found in the Detention Order are mere *ipsi dixit* without any material.

5.It is also pointed out by the learned counsel for the petitioner that one of the similar orders relied upon by the Detaining Authority in CrI.M.P.No.5200 of 2021, dated 20.10.2021, is not similar to the present case, as the bail was granted in favour of the accused therein only by referring to Covid-19 pandemic.

6.On a perusal of Page No.685 of the Booklet, this Court finds that the case relied upon by the Detaining Authority, in CrI.M.P.No.5200 of 2021, dated 20.10.2021, is not similar to the case on hand, since the accused therein was released on bail mainly by Covid-19. Therefore, this Court finds that the subjective satisfaction of the Detaining Authority is irrational and



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the detention order is liable to be quashed on the ground of non-application of mind.

7.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. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail on the basis that the relatives of the detenu are taking steps to file bail application for the detenu, whereas, there is no material to support that observation, and also by referring to a bail order granted in a similar case, wherein, the said bail was granted mainly by citing Covid-19 Pandemic. Therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. When the subjective satisfaction was irrational or there was non-application of mind, the Hon'ble Supreme Court held that the order



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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."

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

9.In view of the aforesaid reason, the detention order passed by the 2nd respondent in BCDFGISSSV No.15/2023 dated 04.04.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., B.Saravanan @ Kuppa, S/o Babu, aged 28 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.)
15.11.2023

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Index : Yes / No

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S.S. SUNDAR, J.



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