



HCP.No.1613/2023

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.1613/2023

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Petitioner

Versus

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St George,
Chennai 600 009.
- 2.The Commissioner of Police/Detaining Authority
Coimbatore City, Coimbatore District.
- 3.The Superintendent of Prison
Central Prison, Coimbatore
Coimbatore District.
- 4.State rep.by its
The Inspector of Police
Cyber Crime Police Station
Coimbatore District.

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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 entire records relating to the petitioner's husband detention under section 2[bb] of Tamil Nadu Act 14 of 1982 vide detention order dated 01.07.2023 on the file of the 2nd respondent herein made in proceedings Memo C.No.54/G/IS/2023 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely J.David son of John Joseph, aged 34 years before this Court and set the petitioner's husband at liberty from detention now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.E.Raj Thilak,APP
assisted by Mr.Aravind.C

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

- (1)The petitioner, wife of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 01.07.2023 slapped on her husband, branding him as "Cyber Law Offender" 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 submitted that the Detaining Authority had arrived at the



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subjective satisfaction that the detenu is likely to be released on bail in the adverse cases and in the ground case by relying upon the bail granted to an accused in the similar case in Crime No.84/2017. However, the offences in the ground case in Crime No.55/2023 are not similar as that of the similar case.

(4) On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail passed in similar case in Crime No.84/2017 in CMP.No.45932/2022 dated 28.12.2022 by the learned Judicial Magistrate No.IV, Coimbatore, 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, the offences in the similar case and ground case are not same or similar, so as to arrive at the subjective satisfaction. In the similar case, the accused therein was charged for the offences u/s.120[B], 419, 471, 420 IPC and under Sections 66C, 66D of the Information Technology Act, 2000. Whereas, in the ground case, the detenu was charged for the offences u/s.419, 420 of IPC and u/s.66D of the Information Technology Act. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining



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Authority that the detenu is likely to be released on bail in the ground case, suffers from non-application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

(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 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:-



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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 detention order in question cannot be



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sustained."

(6) 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.

(7) Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 01.07.2023 in C.No.54/G/IS/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.

[S.S.S.R., J.] [S.M, J.]
14.12.2023

AP
Internet: Yes



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To
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Home, Prohibition and Excise Department
Secretariat, Fort St George,
Chennai 600 009.
- 2.The Commissioner of Police/Detaining Authority
Coimbatore City, Coimbatore District.
- 3.The Superintendent of Prison
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- 4.The Inspector of Police
Cyber Crime Police Station
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- 5.The Public Prosecutor
High Court, Madras.



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

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