



HCP.No.1660/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1660/2023

Shahul Hameed

..

Petitioner

Versus

- 1.The Secretary to Government [Home]
Prohibition and Excise Department
Government of Tamil Nadu
Fort St George, Chennai 600 009.
- 2.The District Magistrate & District Collector
O/o.The Magistrate & District Collector
Erode District, Erode.
- 3.The Superintendent of Police
O/o.The Superintendent of Police
Erode District, Erode.
- 4.The Inspector of Police
Erode North Police Station
Erode.



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5.The Superintendent
Central Prison, Salem.

.. Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records pursuant to the order in Cr.MP.No.19/Goonda/2023 C1 dated 26.07.2023 passed by the 2nd respondent and quash the same consequently produce the detenu Jinna @ Mohammed Ali Jinna aged about 38 years son of Shahul Hameed before this Court and set him at liberty and the detenu now confined in Central Prison, Salem.

For Petitioner : Mr.D.Arun

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

O R D E R

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

(1)The petitioner, father of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 26.07.2023 slapped on his son, 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)The learned counsel for the petitioner though canvassed several points before this Court, this Court is able to find some force in his submission that there is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction. Learned counsel pointed out that the Detaining Authority has not specifically mentioned about the imminent possibility of the detenu coming out on bail in the ground case and he has not relied upon any similar case to arrive at the subjective satisfaction. He has merely stated *"I am aware, in the above case he moved bail petition before the Principal District Sessions Court, Erode and the same has been taken on file in Criminal Miscellaneous Petition Number 2499/2023 and it is pending. However, I am aware that there is a real possibility the bail has been granted to him in the above case in future....."*. This statement of the Detaining Authority without any material, is mere *ipse dixit* and suffers from non application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.
- (4)From a perusal of the Grounds of Detention, in particular, paragraph No.5, it is seen that the subjective satisfaction arrived by the Detaining



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Authority, with regard to the imminent possibility of the detenu coming out on bail is not based on any materials and there is no reference to any similar cases to arrive at such subjective satisfaction. Further, the imminent possibility of the detenu coming out on bail in the ground case has not been specifically stated by the Detaining Authority. This subjective satisfaction of the Detaining Authority is mere *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 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



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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 case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.



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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 26.07.2023 in Cr.MP.No.19/Goonda/2023 C1 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.]
15.12.2023

AP
Internet : Yes



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- 6.The Public Prosecutor
High Court, Madras.



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

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