



HCP.No.1757/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1757/2023

Prasanna Venkatesh

..

Petitioner

Versus

1.The Principal Secretary to the Government of
Tamil Nadu, Home, Prohibition & Excise Department
Fort St George, Chennai-9.

2.The District Collector & District Magistrate
Cuddalore District, Cuddalore.

3.The Superintendent of Police
Cuddalore District, Cuddalore.

4.The Superintendent of Prison
Central Prison, Cuddalore.

5.The Inspector of Police
Muthandikuppam Police Station
Cuddalore District.

..

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 C3/DO/24/2023 on the file of the 2nd respondent, set aside the detention order dated 12.06.2023 and direct the 2nd respondent to produce the detenu Prasanna Venkatesh son of Jagadessan, aged about 29 years presently detained at the Central Prison, Cuddalore under the Tamil Nadu Act 14 of 1982 as a Goonda, before this Court and set him at liberty.

For Petitioner : Mr.I.Syed Sughatulla

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

(1)The petitioner,detenu herein, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 12.06.2023 slapped on him, 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 grounds are raised in the petition, the learned counsel for the petitioner raised the following two grounds. Firstly, there is no proximate link between the ground case and the date of passing of the



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detention order and secondly, the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail by relying upon the bail order granted to the accused in a similar case, suffers from non-application of mind.

(4) With regard to the first contention raised by the learned counsel for the petitioner, it is seen that the ground case referred by the Detaining Authority is stale as the same is registered in the year 2020. However, the Detention Order was passed only on 12.06.2023.

(5) The Hon'ble Supreme Court in the case of ***Sushantha Kumar Banik Vs. State of Tripura and Others*** reported in ***AIR 2022 SC 4715***, has dealt with similar situation and has held in paragraph No.14 as follows:-

"In view of the above subject of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining



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authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.”

(6)The Hon'ble Supreme Court was persuaded to allow the Appeal filed before it mainly on the ground that delay in passing the Order of Detention from the date of the proposal would snap the "live and proximate link" between prejudicial activities and the purpose of detention. Therefore, failure on the part of the Detaining Authority in explaining such delay as in the present case also is a valid ground for quashing the Detention Order.

(7)The Hon'ble Supreme Court in the case of ***Sama Aruna Vs. State of Telangana and Another*** reported in ***2018 [12] SCC 150*** has considered the aspect of staleness of the detention order and has held in paragraphs No.26 and 27 as follows:-

26. The influence of the stale incidents in the detention order is too pernicious to be ignored, and the order must therefore go; both on account of being vitiated due to malice in law and for taking into



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account matters which ought not to have been taken into account.

27. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No. 221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In Ramesh Yadav v. DM, Etah [Ramesh Yadav v. DM, Etah, (1985) 4 SCC 232 : 1985 SCC (Cri) 514] , this Court observed as follows : (SCC p. 234, para 6):-

“6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed



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and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.”

(8) With regard to the second contention raised, in paragraph No.5 of the Grounds of Detention, the Detaining Authority has also stated that there is a possibility of the detenu coming out on bail in the ground case since in a similar case, bail was granted to the accused therein and relied upon the order passed by the learned Judicial Magistrate No.III, Cuddalore, in Cr.MP.No.364/2021 dated 02.06.2021. However, on a perusal of the said order in the Booklet in page No.270, this Court finds that the said order relates to release of the accused on statutory bail u/s.167[2] of Cr.P.C., since the accused therein had been in prison for more than 93 days and not on merits. Therefore, it is not a similar case and the subjective satisfaction of the Detaining Authority, regarding the possibility of the detenu coming out on bail suffers from non-application of mind, which



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vitiates the detention order.

(9)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 in the ground case by referring to a bail order granted to an accused in a similar case in Cr.MP.No.364/2021. However, the said bail was granted on the ground that accused is entitled to statutory bail and not on merits. This indicates non-application of mind on the part of the Detaining Authority. 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.



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Hence, the detention order in question cannot be sustained."

(10) In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgments and in view aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

(11) Accordingly, the detention order passed by the 2nd respondent dated 12.06.2023 in C3/D.O/24/2023, 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.]
23.11.2023

AP
Internet : Yes



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To
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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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