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H.C.P.No.1820 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1820 of 2023

Syed Mohammed Basha @ Batcha

S/o Kaleel Rahuman

..

Petitioner

v.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009

2. The Commissioner of Police
Greater Chennai
Chennai 600 007

3. The Superintendent
Central Prison, Puzhal
Chennai 600 066

4. The Inspector of Police
J5, Sasthri Nagar Police Station
Chennai

..

Respondents

Writ Petition filed under Article 226 of the Constitution of India,



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praying for issuance of a Writ of Habeas Corpus, to call for the records of pertaining to the order of detention dated 25.11.2022 passed by the 2nd respondent in Memo No.440/BCDFGISSSV/2023 and quash the same and produce the petitioner/detenu, Syed Mohammed Basha @ Batcha, S/o Kaleel Rahuman, aged about 27 years, detained at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner :: Mr.K.Gokulram

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

ORDER

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

The petitioner, being the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 25.11.2022, branding him as 'Goonda' under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).



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2. Heard the learned counsel appearing 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 appearing for the petitioner confined his argument to the point that the detaining authority has relied upon the bail order passed in CrI.M.P.No.10485 of 2021 by the Sessions Court, Chennai in respect of the accused in similar case, which is not similar to the case on hand, as the bail was granted to the accused in similar case considering the Covid-19 pandemic. Therefore, the detention order is liable to be set aside on the sole ground that the subjective satisfaction of the detaining authority regarding the possibility of the detenu coming out on bail in the ground case, suffers from non-application of mind.

4. This Court perused page-212 of the booklet and is convinced with the statement of the learned counsel for petitioner that bail was granted to the accused in similar case due to the Covid-19 situation. This Court has held in several cases that the detention order is vitiated if there is no



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application of mind as to the real ground on which the bail was granted to the accused in similar case. It is also relevant to point out that the Hon'ble Supreme Court in the case of ***Rekha v. State of Tamil Nadu through Secretary to Government and another, (2011) 5 SCC 244***, has held that 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 paragraph Nos.10 and 11 of the said judgment of the Hon'ble Supreme Court, as follows:-

“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."

In view of the position of law enunciated by the Hon'ble Supreme Court in Rekha's case, this Court finds that the impugned detention order is vitiated for non-application of mind.

5. Accordingly, the detention order passed by the 2nd respondent dated 25.11.2022 in BCDFGISSSV No.440/2022 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Syed Mohammed Basha



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@ Batcha, S/o Kaleel Rahuman, aged 27 years, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : yes/no

(S.S.S.R.,J.)

(S.M.,J.)

Neutral citation : yes/no

23.11.2023

SS

To

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