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H.C.P.No.1833 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM :

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

H.C.P.No.1833 of 2023

Lokesh
S/o Rajaram

..

Petitioner

v.

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



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the entire records relating to the petitioner's father detention under Tamil Nadu Act 14 of 1982 vide detention order dated 14.07.2023 on the file of the second respondent herein made in proceedings Memo C.No.33/D.O./IS/Tiruppur city/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's father namely Rajaram, S/o Sundaram, aged 49 years before this Honble High Court and set the petitioner's father at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For Petitioner :: Mr.W.Camyles Gandhi

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, who is the son of the detenu, namely, Rajaram, aged 49 years, S/o Sundaram, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 14.07.2023 slapped on his father, branding him as 'Drug Offender' 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,



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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 petitioner submitted that the detention order is liable to be quashed 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, as the accused in similar case was granted bail under Section 167(2) of Cr.P.C., and not on merits.

4. On perusal of the records, this Court is convinced that the petition for bail was filed by the accused in similar case only under Section 167(2) of the Cr.P.C., even though the order dated 29.06.2020 passed in Spl.C.M.P.No.115 of 2020, which was relied upon by the detaining authority, is shown to be as an interim bail. Whereas the detenu in the



present case has not moved any bail application in the alleged ground case on the date when the detention order came to be passed. Therefore, 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, as enunciated by the Hon'ble Supreme Court in the case of ***Rekha Vs. State of Tamil Nadu through Secretary to Government and another, (2011) 5 SCC 244***, holding 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. It is relevant to extract paragraph No.27 of the said judgment of the Hon'ble Supreme Court hereunder:-

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been



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granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

5. In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 14.07.2023 in C.No.33/D.O./IS/Tiruppur City/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Rajaram, S/o Sundaram, aged 49 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

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To

1. The Secretary to Government
Home, Prohibition and Excise Department

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5. The Public Prosecutor
High Court, Madras



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