



HCP.No.1821/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1821/2023

Bharath Kumar

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Petitioner

Versus

State rep.by

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

2.The Commissioner of Police
Greater Chennai.

3.The Superintendent of Police
Central Prison II, Puzhal,
Chennai.

4.The Inspector of Police [L&O]
F3 Nungambakkam Police Station
Chennai.

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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 records pertaining to the order of detention order on 17.08.2023 passed by the 2nd respondent in No.365/BCDFGISSSV/2023 and quash the same as illegal and direct the respondent to produce the detenu Thiru Rahul @ Sanjay Rahul, son of Gopinath, Male, aged about 23 years, now confined at Central Prison II, Puzhal, Chennai before this Court and set him at liberty.

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

ORDER

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

- (1)The petitioner, brother of the detenu herein, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 17.08.2023 slapped on his brother, branding him as "Drug 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.



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(3) Though several grounds are raised in the petition, the learned counsel for the petitioner contended that the bail order in the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail, was obtained during COVID-19 situation and that placing reliance on such order shows the non-application of mind on the part of the Detaining Authority.

(4) On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail in similar case in CMP.No.1414/2021 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act 1985, Chennai-104, However, in the Booklet, in particular, page No.42, it is seen that the bail order in the similar case was obtained during COVID-19 situation and bail was granted to the accused therein with a specific reference to COVID-19. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority to hold that the detenu is likely to be released on bail, suffers from non-application of mind.



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(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 case, 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:-

"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



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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."

(6) In view of the aforesaid facts, the detention order passed by the 2nd respondent dated 17.08.2023 in No.365/BCDFGISSSV/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.

[SSSRJ] [SM J]
21.12.2023

AP
Internet: Yes



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To

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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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