



HCP.No.1870/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1870/2023

Suresh

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Petitioner

Versus

1.The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Fort St George,
Chennai-600 009.

2.The Commissioner of Police/Detaining Authority
Tiruppur City, Tiruppur.

3.The Superintendent of Prison
Central Prison, Coimbatore
Coimbatore District.

4.The Inspector of Police
Thirumuruganpoondi Police Station
Tiruppur District.

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Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution



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of India praying for a Writ of Habeas Corpus calling for the entire records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 03.07.2023 on the file of the 2nd respondent herein made in proceedings Memo C.No.31/G/IS/Tiruppur City/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Kishore Kumar @ Prasanth son of Suresh aged 26 years before this Court and set the petitioner's son 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.Aravind .C

ORDER

[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 03.07.2023 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.

(3)Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the bail order granted to the co-accused of



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the detenu herein in the ground 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 where the learned Additional Public Prosecutor had not objected for grant of bail to the co-accused therein and however, bail was denied to the detenu herein in the ground case as the Public Prosecutor opposed the petition only on the ground that the detenu is likely to be detained under the Goondas Act.

(4) On a perusal of the Grounds of Detention, in particular, paragraph No.5, it is seen that the Detaining Authority had relied upon the order of bail passed in CrI.MP.No.1228/2023 by this Court on 22.06.2023 in respect of the co-accused of the detenu who was arrayed as A2 in the ground case, to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the said case. However, a perusal of the Booklet, in particular, page No.186, it is seen that bail was granted by the learned Principal Sessions Judge, Tiruppur, to the 2nd accused/co-accused of the detenu in the ground case in CrI.MP.No.1228/2023 as there was no objection on the side of the prosecution with regard to the 2nd accused. However, the learned Public Prosecutor opposed the bail petition in



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respect of the detenu and the only objection that was raised by him in respect of the detenu herein is that the detenu was likely to be detained under the Goondas Act. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

(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 Hon'ble Supreme Court held that the order of detention is liable to be



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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.

11. In our opinion, the detention order in



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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 reason, 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 03.07.2023 in Memo C.No.31/G/IS/Tiruppur City/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.]
29.11.2023

AP
Internet : Yes



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- 2.The Commissioner of Police/Detaining Authority
Tiruppur City, Tiruppur.
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- 4.The Inspector of Police
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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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