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H.C.P.No.1889/2023

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.1889/2023

Devi

... Petitioner

Vs.

State rep.by

1.The Secretary to Government,
Home, Prohibition, Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai, Chennai District.

3.The Superintendent
Central Prison, Puzhal, Chennai.

4.The Inspector of Police
Mambalam Railway Police Station
Chennai.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the



H.C.P.No.1889/2023

records in BCDFGISSSV No.357/2023 passed by the 2nd respondent dated 11.08.2023 and set aside the same and directing the respondents to produce the detenu viz., Sakthivel, son of Venkatesan aged about 23 years who is now detained in Central Prison, Puzhal, Chennai before this Court and set the detenu at liberty forthwith.

For Petitioner	:	Mr.S.Swamidoss Manokaran
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, mother of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 11.07.2023 slapped on her 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 this petition, the learned counsel for the petitioner focussed mainly on the ground that the subjective satisfaction arrived at by the Detaining Authority that the detenu is likely



H.C.P.No.1889/2023

WEB COPY

to be released on bail suffers from non-application of mind. In the

Grounds of Detention, the Detaining Authority has simply observed that

“the Sponsoring Authority has stated that it is learnt that Thiru.Sakthivel's relative are taking steps to take him out on bail in Mambalam Railway Police Station Crime No.82/2023 cases by filing bail application before the appropriate Court.” However, the statement of the relatives of the detenu that they are planning to file bail application to bring out the detenu on bail, is not dated. Hence, the learned counsel for the petitioner raised a *bona fide* doubt as to when these statements were obtained from the relatives of the detenu and as to the subjective satisfaction of the Detaining Authority based on these undated documents and the same vitiated the Detention order.

4.It is seen from records that the statements obtained by the Sponsoring Authority from the relatives of the detenu, enclosed in the Booklet, stating that they are planning to file bail application to bring out the detenu on bail, are not dated. On a perusal of the Grounds of Detention, it is seen that, in Para No.4, the Detaining Authority has stated that the Sponsoring Authority has stated that he came to understand that the relatives



H.C.P.No.1889/2023

of the detenu are taking steps to take him out on bail in the ground case by filing bail applications before the appropriate Court, and has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the statements obtained by the Sponsoring Authority from the relatives of the detenu stating that they are planning to file bail application to bring out the detenu on bail, are not dated, the veracity of the Report becomes doubtful. Hence, this Court is of the view that the subjective satisfaction arrived at by the Detaining Authority based on such undated materials, suffers from non-application of mind.

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 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. 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.



H.C.P.No.1889/2023

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 facts, 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 in BCDFGISSSV No.357/2023, dated 11.08.2023, 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] [SMJ]
21.12.2023

AP

Internet : Yes



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- 2.The Commissioner of Police,
Greater Chennai, Chennai District.
- 3.The Superintendent
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police
Mambalam Railway Police Station
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- 5.The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J.

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