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H.C.P.No.1936 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM :

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

H.C.P.No.1936 of 2023

Sumathi
W/o Venkatesan .. Petitioner

v.

1. The State of Tamil Nadu
rep by its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai 600 009

2. The Commissioner of Police
Avadi City, Avadi Commissionerate Office
Chennai

3. The Inspector of Police
E-5, Sholavaram Police Station
Thiruvallur District

4. The Superintendent of Prison
Central Prison-II, Puzhal
Chennai-66 .. 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, calling for the records relating to the detention order in BCDFGISSSV.No.189/2023 dated 25.07.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Dinesh, S/o Venkatesan, the detenu, now confined in Central Prison, Puzhal at Chennai, before this Honble Court and set him at liberty.

For Petitioner :: Mr.K.Karthik

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 mother of the detenu, namely, Dinesh, aged 26 years, S/o Venkatesan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 25.07.2023 slapped on her son, 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 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 to be released on bail suffers from non-application of mind. In the grounds of detention, the detaining authority has simply observed that *“However, the sponsoring authority has stated that it is learnt that Thiru.Dinesh's relatives are taking steps to take him out on bail in E-5 Sholavaram Police Station Crime No.488/2023 by filing bail application before the appropriate Court....”* The special report of the sponsoring authority is not dated. Further, the 161 statement of the mother of the detenu that she is planning to file bail application to bring out the detenu on bail, is also not dated. Hence, the learned counsel for the petitioner raised a *bona fide* doubt as to when this statement was obtained from the mother of the detenu and as to the date on which the special report was sent by the sponsoring authority to the detaining authority. The learned counsel further pointed out that



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unless the special report of the sponsoring authority is shown to have preceded the detention order, it may not have relevance and hence, the subjective satisfaction of the detaining authority based on these undated documents, would vitiate the detention order.

4. It is seen from the records that the special report of the sponsoring authority is not dated. Further, the statement obtained by the sponsoring authority from the mother of the detenu, enclosed in the booklet, stating that she is planning to file bail application to bring the detenu out on bail, is also not dated. On perusal of para-4 of the grounds of detention, it is seen that the detaining authority has stated that the sponsoring authority came to understand that the relatives of the detenu are taking steps to take him out on bail in the ground case by filing bail application before the appropriate Court and on the basis of such statement, has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the statement obtained by the sponsoring authority from the mother of the detenu stating that she is planning to file bail application to bring the detenu out on bail, is not dated and even the special report of the sponsoring



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authority is not dated, the veracity of the report becomes doubtful. The compelling necessity to detain the detenu would also depend on when the sponsoring authority has sent his report. In the absence of such report, the compelling necessity to pass the detention order becomes suspicious. 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. This issue is no longer res integra, as 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 and 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 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



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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 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.

5. Accordingly, the detention order passed by the 2nd respondent dated



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25.07.2023 in No.189/BCDFGISSSV/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Dinesh, S/o Venkatesan, aged 26 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

15.12.2023

SS

To

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Fort St.George, Chennai 600 009
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Chennai
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4. The Superintendent of Prison
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5. The Public Prosecutor
High Court, Madras



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