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HCP.No.1949 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.1949 of 2023

Murali

.. Petitioner

Vs.

1.State of Tamil Nadu rep. By the Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section), Vepery,
Chennai - 7.

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

4.The Inspector of Police,
S-8 Adambakkam Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Habeas Corpus to call for the records relating to the detention order vide BCDFGISSSV No.280/2023 dated 29.06.2023 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's son namely Vimalraj @ Karunguil, S/o.Murali, aged 26 years (who is presently undergoing detention in the Central Prison, Puzhal)



HCP.No.1949 of 2023

before this Court and set him at liberty.

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For Petitioner : Mr.N.Arun Kumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

The petitioner, father of the detenu Vimalraj @ Karunguil, has come forward with this petition challenging the detention order passed by the second respondent dated 29.06.2023 slapped on his 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].

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several points have been raised by the petitioner, the learned counsel for the petitioner submitted that there is no application of mind on the part of the Detaining Authority in



HCP.No.1949 of 2023

arriving at the subjective satisfaction that the detenu is likely to be released on bail in the ground case as the order passed in the similar case in Crl.M.P.No.377/2023 by the learned Principal District and Sessions Judge, Chengalpattu, is not similar to the present case. Learned counsel pointed out that while granting bail to the accused in the similar case, the learned Judge had recorded the fact that the co-accused to the accused therein was granted bail and that the accused therein was in the judicial custody for more than 65 days. Whereas, it is not so in the case of the detenu. Hence, it is stated that the detention order is liable to be quashed on the ground of total non-application of mind. Learned counsel for the petitioner also submitted that the detention orders clamped against the co-accused have been quashed by this Court vide orders dated 28.11.2023 in H.C.P.Nos.1874 and 1896 of 2023.

4. This Court, upon examination of the records, is unable to discard the contention of the learned counsel for the petitioner. From a perusal of the Booklet, in particular, page Nos.374 and 375, it is seen that the Detaining Authority has relied upon the bail order in Crl.M.P.No.377/2023 granted to the accused therein, to arrive at the subjective satisfaction that the detenu herein is likely to be released on bail in the ground case. However, it is to be



HCP.No.1949 of 2023

pointed out that the learned Judge while granting bail in Crl.M.P.No.377/2023 has particularly recorded the fact that the accused therein was in judicial remand for more than 65 days and that the co-accused therein was released on bail. The case of the detenu herein is not similar to that of the case in Crl.M.P.No.377/2023. Hence, it cannot be compared with. The Detaining Authority has not taken into consideration this vital aspect, while arriving at the subjective satisfaction. Hence, the subjective satisfaction of the Detaining Authority 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 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



HCP.No.1949 of 2023

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 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 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 second



HCP.No.1949 of 2023

respondent dated 29.06.2023 in BCDFGISSSV No.280/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Vimalraj @ Karunguil, S/o.Murali, aged about 26 years, 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.]
13.12.2023

Index:Yes/No
Neutral Citation:Yes/No
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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section), Vepery,
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Chennai.
- 5.The Public Prosecutor
High Court, Madras.

S.S.SUNDAR, J.,



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**AND
SUNDER MOHAN, J.,**

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