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HCP.No.1991/2023

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.1991/2023

Thirumalai

Versus

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Petitioner

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

2.District Collector & District Magistrate,
Vellore District, Vellore.

3.The Superintendent of Police
Vellore District, Vellore.

4.The Superintendent of Prison
Central Prison, Vellore.

5.The Inspector of Police
Vellore South [L&O] Police Station
Vellore District.

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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 in connection with the order of detention passed by the 2nd respondent 17.08.2023 in C3/DO.No.80/2023 petitioner/detenu Thirumalai, male, aged 36 years son of Seethapathy who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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, 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 "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.



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(3)The learned counsel for the petitioner though canvassed several points before this Court, this Court is able to find some force in his submission that there is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction. Learned counsel pointed out that the Detaining Authority has not specifically referred to any material or reason to infer that there is imminent possibility of the detenu coming out on bail in the ground case as he has not even relied upon any similar case to arrive at the subjective satisfaction. He has merely stated "*However, information from reliable sources reveals that he is intending to file a bail petition through his relative. As bails are being granted by courts in such cases, there is a mostly likely that he [Thiru Subhash] coming out on bail by filing any bail application in appropriate Court.....*". This statement of the Detaining Authority without any material, which is mere *ipse dixit*, suffers from non application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

(4)From a perusal of the Grounds of Detention, in particular, paragraph No.5, it is seen that the subjective satisfaction arrived by the Detaining Authority, with regard to the imminent possibility of the detenu coming



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out on bail is not based on any materials and there is no reference to any similar cases to arrive at such subjective satisfaction. Further, the imminent possibility of the detenu coming out on bail in the ground case has not been specifically stated by the Detaining Authority. This subjective satisfaction of the Detaining Authority is mere *ipse dixit* and 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 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 question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there



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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 2nd respondent dated 17.08.2023 in C3/D.O.No.78/2023 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.]
21.12.2023

AP
Internet : Yes



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High Court, Madras.



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S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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