



HCP.No.2087/2023

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.2087/2023

Ayyappan

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St George, Chennai – 600 009.

2.The District Collector & The District Magistrate
Kallakurichi Taluk and District.

3.The Inspector of Police
Varanjaram Police Station
Kallakurichi District.

4.The Superintendent of Police
Kallakurichi District.

5.The Superintendent
Central Prison, Cuddalore.

... 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 pertaining to the impugned order of detention passed by the 2nd respondent in DO.NC2/07/2023 dated 24.04.2023 and quash the same, consequently, direct the respondents to produce the body of the detenu viz., Ayyappan, son of Angamuthu, aged 31 years now confined at Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.T.Saravanan

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 24.04.2023 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) Though several points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail by relying upon the bail order granted to the accused in a similar case, suffers from non-application of mind.

(4) In paragraph No.5 of the Grounds of Detention, the Detaining Authority has also stated that there is a possibility of the detenu coming out on bail in the ground case since in a similar case, bail was granted to the accused therein and relied upon the order passed by this Court in CrI.OP.No.21103/2016 dated 16.11.2016. However, on a perusal of the said order in the Booklet in page No.76, this Court finds that the facts in that case are not similar. In that case, the accused was arrested after a NBW was issued for his non-appearance and granted bail, and the accused therein was already granted bail under Section 167[2] of Cr.P.C. Further, the order in the similar case relates to bail. However, the Detaining Authority has observed in paragraph No.5 that the accused therein was granted anticipatory bail. Therefore, the subjective



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satisfaction of the Detaining Authority by relying upon that order in which the facts are different suffers from non application of mind which vitiates the detention order.

(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. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail in the ground case by referring to a bail order granted to an accused in a similar case in CrI.OP.No.21103/2016 by this Court. However, the said bail was granted on the ground that accused therein was arrested on the basis of issuance of NBW since he was found absconding after coming out on bail and not on merits. The said case is not similar to the ground case and hence, it cannot be compared. This indicates non-application of mind on the part of the Detaining Authority. When the subjective satisfaction was irrational



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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.



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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 in the aforesaid judgment and in view 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 24.04.2023 in Memo.D.No.C2/07/2023, 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]
29.11.2023

AP
Internet : Yes



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To

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- 5.The Superintendent
Central Prison, Cuddalore.
- 6.The Public Prosecutor,
High Court, Madras.



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S.S. SUNDAR, J.,
and
SUNDER MOHAN, J.,

AP

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