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HCP.No.2168 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

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

H.C.P.No.2168 of 2023

Vinothkumar M

.. Petitioner

Vs.

1.The State of Tamil Nadu rep. By its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Salem City, Salem.

3.The Superintendent of Prison,
Central Prison, Salem District.

4.The Inspector of Police,
Sooramangalam All Women Police Station,
Salem District.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Habeas Corpus to call for the records pertaining to the order of detention passed in C.M.P.No.41/Sexual Offender/Salem City/2023 dated 15.05.2023 by the second respondent and set aside the same and direct the respondents to produce the petitioner's brother by name Akash, son of Sambu, aged about 19 years before this Court, now confined in Central Prison, Salem and set him at liberty.



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For Petitioner : Mr.C.Deepak 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, brother of the detenu Akash, has come forward with this petition challenging the detention order passed by the second respondent dated 15.05.2023 slapped on his brother, branding him as "Sexual Offender" 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 grounds are raised in the petition, the learned counsel for the petitioner contended that the bail order in the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail, was obtained during COVID-19 situation and that placing



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reliance on such order shows the non-application of mind on the part of the Detaining Authority.

4. On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the bail order in similar case in C.M.P.No.221/2020 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Salem on 02.06.2020. However, in the Booklet, in particular, page Nos.89 and 90, it is seen that the bail order in the similar case was obtained during COVID-19 situation and bail was granted to the accused therein with a specific reference to COVID-19. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority to hold that the detenu is likely to be released on bail, 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 case, bail was granted by Courts. Since no details had been given about the



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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 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."*



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6. In view of the aforesaid reason, the detention order passed by the second respondent dated 15.05.2023 in C.M.P.No.41/Sexual Offender/Salem City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Akash, S/o.Sambu, aged about 19 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,
Secretariat, Fort St. George, Chennai - 9.
- 2.The Commissioner of Police,
Salem City, Salem.
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**S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,**

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