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HCP.No.89 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM :

**THE HONOURABLE MR. JUSTICE M.S. RAMESH**  
**AND**  
**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

H.C.P.No.89 of 2024

Kumar

... Petitioner

***Vs.***

State rep. by:

- 1.The Secretary to Government,  
Home, Prohibition & Excise Department,  
Secretariat, Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,  
Salem City.
- 3.The Superintendent of Prison,  
Central Prison, Salem.
- 4.The Inspector of Police,  
Salem Town Police Station,  
Salem.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records in C.M.P.No.94/Goonda/Salem City/2023 dated 16.10.2023 on the file of the



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Commissioner of Police, Salem City, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Premkumar, aged about 22 years, S/o.Kumar, now confined at Central Prison, Salem and set him at liberty forthwith.

For Petitioner : Mr.S.Sengkodi

For Respondents : Mr.E.Raj Thilak,  
Additional Public Prosecutor  
assisted by Mr.C. Aravind

### **ORDER**

**M.S.RAMESH, J.**  
**AND**  
**SUNDER MOHAN, J.**

The petitioner herein, who is the father of the detenu Premkumar, aged about 22 years, has come forward with this petition challenging the detention order passed by the second respondent dated 16.10.2023, 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].



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2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner pointed out that the Detaining Authority has not applied its mind while expressing its subjective satisfaction that the detenu is also likely to be released on bail. It is his submission that the case relied upon by the Detaining Authority is not similar to the present case, as the bail was granted in favour of the accused therein by recording the fact that the accused was released from detention three months before the bail order.

4. On a perusal of the Booklet, this Court finds that the bail order relied upon by the Detaining Authority in C.M.P.No.346 of 2019, dated 02.02.2019, is not similar to the case on hand, since the accused therein was granted bail after recording the fact that he was released from detention three months before passing of the bail order. Moreover, it is admitted that there are three adverse cases against the detenu herein.



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Considering the nature of the bail order in the similar case relied upon by the Detaining Authority and the case on hand, this Court finds that the subjective satisfaction of the Detaining Authority that the detenu is also 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'***, had 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. 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 paragraph Nos.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*



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*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.



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7. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 16.10.2023 in C.M.P.No.94/Goonda/Salem City/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Premkumar, aged about 22 years, S/o.Kumar, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[M.S.R., J]

[S.M., J]

22.02.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

***Sni***



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To

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Home, Prohibition & Excise Department,  
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- 5.The Public Prosecutor,  
High Court, Madras.



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**M.S.RAMESH, J.**  
**and**  
**SUNDER MOHAN, J.**

***Sni***

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