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HCP.No.407 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM :

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

H.C.P.No.407 of 2024

Kamaal

...Petitioner/Detenu

Vs.

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort St.George, Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police, Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison at Puzhal – II,
Chennai – 600 066.
- 4.The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records in Detention Order in BCDFGISSSV No.614 of 2023 dated 23.11.2023, on the file of the



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second respondent and set aside the same and direct the respondents herein to produce the body of the detenu Mr.Kamaal S/o. Usman aged 47 years now confined in Central Prison at Puzhal before this Court and set him at liberty.

For Petitioner : Ms.B.Subadra Devi
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/detenu, viz., Kamaal, son of Usman, aged about 47 years, detained at Central Prison, Puzhal, has come forward with this petition challenging the detention order passed by the second respondent dated 23.11.2023, 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 this petition, the learned counsel for the petitioner focused mainly on the ground that the subjective satisfaction of the Detaining Authority that the relatives of the detenu are taking steps to take out the detenu on bail, suffers from non-application of mind, as the statement under 161 Cr.P.C., said to have been made by the petitioner's relative before the Sponsoring Authority, is not dated. Hence, the learned counsel for the petitioner raised a *bona fide* doubt as to when this statement was obtained from the petitioner's relative. The learned counsel further pointed out that, unless the statement relied upon by the Sponsoring Authority is immediately before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the Detaining Authority based on this undated statement, would vitiate the Detention Order.

4. It is seen from records that the statement obtained by the



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Sponsoring Authority from the petitioner's relative, enclosed in the Booklet, stating that he is planning to file a bail application to bring out the detenu on bail, is not dated. On a perusal of the Grounds of Detention, it is seen that, in Para No.3, the Detaining Authority has observed that the Sponsoring Authority has stated that he came to understand that the relatives of the detenu are taking steps to take him out on bail by filing bail application before the appropriate Court and has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the statement obtained by the Sponsoring Authority from the relative of the detenu stating that he is planning to file bail application to bring out the detenu on bail is not dated, the veracity of such statement becomes doubtful. The compelling necessity to detain the detenu would also depend on when the statement was obtained. In the absence of the date, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective satisfaction of the Detaining Authority based on such undated material, 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



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'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. 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 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



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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. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 23.11.2023 in BCDFGISSSV No.614 of 2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Kamaal, son of Usman, aged about 47 years, detained at Central Prison, at Puzhal, is directed to be set at liberty forthwith, unless



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he is required in connection with any other case.

[M.S.R., J]

[S.M., J]

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Index: Yes/No

Neutral Citation: Yes/No

dk

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
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- 5.The Public Prosecutor,
High Court, Madras.



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