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H.C.P.No.1877 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1877 of 2023

Sampath

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 600 009.

2.The District Magistrate and District Collector,
Salem District,
Salem.

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

4.The Superintendent of Police,
Salem District,
Salem

5.The Inspector of Police,
Kondalampatti All Women Police Station,
Salem.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the



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Constitution of India, praying for the issuance of Writ of Habeas Corpus, calling for the records pertaining to the order of detention passed in C.M.P.No.01/SEXUAL OFFENDER/C2/2023 dated 01.03.2023 by the second respondent and set aside the same and directing the respondents to produce the detenu by name Thiru.Sampath son of Manickam aged about 35 years before this Court now confined in Central Prison, Salem, and him at liberty.

For Petitioner : Mr.E. Viswanathan

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

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

The petitioner herein is the detenu Sampath, S/o. Manickam aged 35 years, has come forward with this petition challenging the detention order passed by the second respondent dated 01.03.2023 slapped on him, branding him as "Sexual Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand 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 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 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 only by referring to Covid-19 pandemic.

4. On a perusal of the Booklet, this Court finds that the bail order passed in the case relied upon by the Detaining Authority, in C.M.P.No.221/2020, dated 02.06.2020, is not similar to the case on hand, since the accused therein was released on bail mainly by citing Covid-19. Therefore, this Court finds that the subjective satisfaction of the Detaining Authority is irrational and the detention order is liable to quashed on the ground of non-application of mind.

5. The Hon'ble Supreme Court, in the case of ***Rekha Vs. State of***



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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 by referring to a bail order granted to the accused in a similar case, wherein, the said bail was granted mainly by citing Covid-19 Pandemic. Therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. 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



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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.

7. Accordingly, the detention order passed by the second



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respondent, in C.M.P.No.01/SEXUAL OFFENDER/C2/2023, dated 01.03.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The petitioner/detenu viz., Sampath, S/o.Manickam, aged 35 years, 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]

03.01.2024

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

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To
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Chennai – 600 009.

2.The District Magistrate and District Collector,
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Salem.

3.The Superintendent of Prison,
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Salem District,
Salem

5.The Inspector of Police,
Kondalampatti All Women Police Station,
Salem.

6.The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J.

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