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H.C.P.No.2104 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2104 of 2023

K. Rajasekar

...Petitioner/Father of the Detenu

Vs.

1. The State of Tamil Nadu
Represented by its Secretary to Government
Home,, Prohibition and Excise Department
Secretariat, Chennai 9
2. The District Collector and District Magistrate,
Cuddalore District, Cuddalore.
3. The Superintendent of Police,
Cuddalore District, Cuddalore.
4. The Superintendent,
Central Prison, Cuddalore.
5. The Inspector of Police,
Virudhachalam Police Station,
Virudhachalam District.

...Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the records in C3/D.O./55/2023 dated 26.09.2023 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce the petitioner's son Raja Adalarasu, aged about 25 years, who now detailed in Central Prison, Cuddaore, before this Hon'ble Court and set him at liberty.

For Petitioner : Ms.A. Nithla
for Mr. K. Gandhi Kumar

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

ORDER

(Order of the Court was made by **SUNDER MOHAN, J.**)

The petitioner, father of the detenu Raja Adalarasu, S/o.Rajasekar, aged about 25 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 26.09.2023 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 and the learned

Additional Public Prosecutor appearing for the respondents.

3. The detention order is liable to be quashed on the sole ground that the subjective satisfaction arrived at by the Detaining Authority regarding the imminent possibility of the detenu coming on bail, suffers from non-application of mind.

4. The Detaining Authority had relied upon an order passed in CrI.M.P.No.416/2021 on 21.01.2021 by the learned District and Sessions Judge, Cuddalore, to come to the conclusion that the detenu is likely to be released on bail as in a similar case, mentioned above, the accused was released on bail. However, the abovesaid order filed in the booklet is with regard to a relaxation petition and not a bail order. Unless the bail order is perused one cannot come to the conclusion that the case is similar in nature. Therefore, the satisfaction of the Detaining Authority that the detenu is likely to be released on bail, suffers from non application of mind. This issue is also covered by the Hon'ble Supreme Court in ***Rekha Vs. State of Tamil***



Nadu through Secretary to Government and Another reported in 2011 [5]

WEB COPY **SCC 244.** The relevant observations are as follows:-

"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



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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."

5. 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.

6. Accordingly, the detention order passed by the 2nd respondent dated 26.09.2023 in C3/D.O.No.55/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Raja Adalarasu, aged 25 years S/o.Rajasekar, 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]
31.01.2024

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Index : Yes / No

Neutral Citation : Yes / No



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6. The Public Prosecutor,
High Court, Madras.
7. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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

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