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H.C.P.No.2117 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2117 of 2023

Jasbir Singh Anand

... Petitioner

Vs.

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

2.The Commissioner of Police
Greater Chennai, Chennai.

3.The Inspector of Police
N-3, Muthialpet Police Station
Chennai.

4.The Superintendent
Central Prison, Puzhal, Chennai.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution

Page 1 of 9



H.C.P.No.2117 of 2023

of India praying for the issuance of a Writ of Habeas Corpus, to call for the entire records, relating to petitioner's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 02.09.2023 on the file of the second respondent herein made in proceedings No.384/BCDFGISSSV/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner namely Jasbir Singh Anand, 35 years, son of Gurbir Singh Anand, before this Court and set him at liberty, now petitioner detained at Central Prison, Puzhal, Chennai 600 066.

For Petitioner : Mr.C.C.Chellappan

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/detenu, Jasbir Singh Anand, aged about 35 years, S/o. Gurbir Singh Anand, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 02.09.2023 slapped on him, branding him as a "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders,



H.C.P.No.2117 of 2023

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 challenges the detention order mainly on two grounds, viz., i) delay in passing the Order of Detention and ii) that the subjective satisfaction of the detaining authority that the detenu is likely to be released on bail suffers from non-application of mind.

4. Firstly, in the instant case, admittedly, the detenu was arrested on 11.07.2023 and the detention order was passed on 02.09.2023. In a similar case, where there was a delay in passing the detention order on 18.06.2022 after the arrest of the detenu on 08.04.2022, this Court in HCP No.1388 of 2022 [*Gomathi Vs. Principal Secretary to Government and Others, reported in 2023 SCC OnLine Mad 6332*], held as follows:



H.C.P.No.2117 of 2023

WEB COPY

“6.... As between 08.04.2022 and 18.06.2022, it is well over two months and given the facts and circumstances of the instant case, particularly ground and the adverse cases, we find that this live and proximate link between grounds and purpose of detention had in fact snapped.”

This Court, in the said order, drew inspiration from the judgment of the Hon'ble Supreme Court in *Sushanta Kumar Banik v. State of Tripura*, reported in **2022 LiveLaw (SC) 813**, though in that case, the Hon'ble Supreme Court did not directly deal with the issue of delay in passing the detention order after the arrest of the detenu. The relevant observations of the Hon'ble Supreme Court are extracted hereunder:-

“20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

5. In yet another case, i.e., in *Nagaraj v. State of Tamil Nadu*,



H.C.P.No.2117 of 2023

reported in **(2018) 3 MWN (Cri) 428**, this Court held that the delay of 36 days in passing the detention order after the arrest of the detenu would snap the live and proximate link between the grounds and purpose of detention. Therefore, we are of the view that, in view of the unexplained delay in passing the order of detention after the arrest of the detenu, the detention order is liable to be quashed.

6. Secondly, the Detaining authority stated that the detenu's earlier bail application was dismissed on 31.08.2023 and there is a real possibility of him coming out of bail, but he has not referred any case of similar nature wherein bail was granted by this Court. Further, admittedly, the detenu was in possession of commercial quantity of drugs. The detaining authority has not considered that the rigours of Section 37 of the NDPS Act would be applicable while considering the bail application. The detaining authority has mechanically stated that the detenu is likely to be released on bail, which is his mere *ipse dixit*. Therefore, this Court is of the view that the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail, is irrational and suffers from non-application of mind.



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7.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***, held that if the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail, suffers from non application of mind, the detention order would be vitiated. The relevant observations are extracted hereunder:-

“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.



H.C.P.No.2117 of 2023

Hence, the detention order in question cannot be sustained."

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8. 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.

9. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 02.09.2023 in No.384/BCDFGISSSV/2023, is hereby set aside, and the Habeas Corpus Petition is allowed. The detenu viz., Jasbir Singh Anand S/o Gurbir Singh Anand, aged about 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]
05.01.2024

pvs/ars

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WEB COPY



H.C.P.No.2117 of 2023

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

pvs/ars

To

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H.C.P.No.2117 of 2023



WEB COPY



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