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H.C.P.No.2195 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2195 of 2023

I.Khaja Moideen @ John Basha

... Petitioner

Vs.

1.State Represented by its

Home Secretary to the Govt. Of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St. George,
Chennai 600 009.

2.The Commissioner of Police,

Greater Chennai,
Chennai 600 007.

3.The Inspector of Police,

T-4, Maduravoyal Police Station,
Maduravoyal, Chennai 600 095.

4.The Superintendent of Police,

Central Prison,
Puzhal.

... 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 relating to the order of Detention passed by the second respondent dated 07.08.2023 in BCDFGISSSV No.346/2023 against the petitioner, the Detenue Khaja Moideen @ John Basha, Male, aged about 38 years, son of Ismail, who is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the detenue before this Court and set him at liberty.

For Petitioner	:	Mr.R.Karthik
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, namely Khaja Moideen @ John Basha, S/o.Ismail, aged 38 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 07.08.2023 slapped on him, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest



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Offenders, Goondas, Immoral Traffic Offenders, 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 pointed out that the bail order relied upon by the Detaining Authority is not similar to the case on hand, by referring to the fact that in the said petition bail was not granted to the accused therein. Therefore, the learned counsel submitted that the Detaining Authority has not applied his mind while expressing his subjective satisfaction that the detenu is also likely to be released on bail.

4.On a perusal of the Booklet, this Court finds that, in the similar case relied upon by the Detaining Authority, i.e., C.M.P.No.2785 of 2023, dated 27.12.2022, the accused therein was not granted bail. Hence, this Court is of the view that the subjective satisfaction of the Detaining Authority that



the detenu is also likely to be released on bail, by relying upon the aforesaid similar case, 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***, 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 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 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. Accordingly, the detention order passed by the 2nd respondent, in No.346/BCDFGISSSV/2023, dated 07.08.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Khaja Moideen @ John Basha, S/o.Ismail, aged 38 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]
02.01.2024

pvs

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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To

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