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H.C.P.No.2265 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2265 of 2023

Murugan

...Petitioner/ Father of the Detenu

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, For St. George, Chennai – 600 009.
- 2.The Commissioner of Police,
Salem City, Salem District.
- 3.The Superintendent of Prison,
Central Prison, Salem, Salem District.
- 4.State represented by its
The Inspector of Police,
Ammamet Police Station,
Salem District (Crime No.1006/2023)

...Respondents

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 entire records relating to the petitioner's son detention under Tamil Nadu



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Act 14 of 1982 vide detention order, dated 19.10.2023 on the file of the second respondent herein made in proceedings Memo C.M.P. No.97/Goonda/Salem City/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Jeevanraj @ Jeeva, S/o.Murugan, aged 23 years before this Hon'ble High Court and set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Salem.

For Petitioner : Mr. W.Camyles Gandhi
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, who is the father of the detenu Jeevanraj @ Jeeva, aged 23 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 19.10.2023 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.1256/2019 on 24.04.2019 by the learned Principal Sessions Judge, Salem, to infer that bail is likely to be granted to the detenu. However, on a perusal of the order passed in CrI.M.P.No.1256/2019, this Court finds that said bail was granted to the accused therein since the co-accused in that case was already granted bail. Whereas the facts involved in the ground case are not similar to that case. Therefore, the said order relied upon by the Detaining Authority to infer that in similar cases bail has been granted, suffers from non application of mind, since the accused therein was not on a similar footing as that of the detenu. This issue is also



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covered by the Hon'ble Supreme Court in ***Rekha Vs. State of Tamil Nadu*** through ***Secretary to Government and Another*** reported in **2011 [5] 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.



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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."

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 19.10.2023 in C.M.P. No.97/Goonda/Salem City/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Jeevanraj @ Jeeva, aged 23 years, S/o.Murugan, 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]
23.02.2024

bga
Index : Yes / No
Neutral Citation : Yes / No



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To,

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, For St. George, Chennai – 600 009.
2. The Commissioner of Police,
Salem City, Salem District.
3. The Superintendent of Prison,
Central Prison, Salem, Salem District.
4. State represented by its
The Inspector of Police,
Ammamet Police Station,
Salem District (Crime No.1006/2023)
6. The Public Prosecutor,
High Court, Madras.
7. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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