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HCP.No.2282 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2282 of 2023

Lakshmanan

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai Police Commissioner,
The Commissioner Office,
Vepery, Chennai – 7.

3.The Superintendent of Police,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police,
P2-Otteri Police Station,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, calling for the records relating to the



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detention order in No.484/BCDFGISSSV/2023 dated 17.10.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Arun @ Appu, S/o.Lakshmanan, the detenu. Now confined in Central Prison, Puzhal, Chennai, before this Court and set the petitioner's son Arun @ Appu, S/o.Lakshmanan, aged about 35 years the detenu herein at liberty.

For Petitioner : Mr.N.Naresh

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 herein, who is the father of the detenu Arun @ Appu, aged about 35 years, has come forward with this petition challenging the detention order passed by the second respondent dated 17.10.2023 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



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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, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the ground that the subjective satisfaction of the Detaining Authority while stating that the detenu is likely to be released on bail, by relying upon the similar order, is not similar to the case of the detenu and therefore, there is a non-application of mind while passing the Detention Order.

4. On perusal of the records, it is seen that in the similar order relied upon by the Detaining Authority in CrI.M.P.No.18439 of 2018 dated 01.11.2018 by the Principal Sessions Judge, Chennai, the reason assigned for granting bail to the accused therein is that the charge sheet was not filed. However, in the case of the detenu, charge sheet has already been filed. Thus, the detention order is vitiated on this ground



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and the same is liable to be quashed.

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 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,



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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 respondent on 17.10.2023 in No.484/BCDFGISSSV/2023, is hereby set



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aside and the Habeas Corpus Petition is allowed. The detenu viz., Arun @ Appu, aged 35 years, S/o.Lakshmanan, 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]
21.02.2024

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No

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To

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The Commissioner Office,
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