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H.C.P.No.2459 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2459 of 2023

Lamboodharan

...Petitioner/Brother of the Detenu

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai.

3. The Superintendent of Police,
Central Prison-II, Puzhal, Chennai.

4.The Inspector of Police (L&O)
H-5, New Washermenpet Police Station,
Chennai. ...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 records pertaining to the order of detention dated 27.06.2023 passed by the



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2nd respondent in No.266/BCDFGISSSV/2023 and quash the same as illegal and direct the respondent to produce the detenue Thiru.Anbarasu @ Inba S/o.Om Prakash, Male aged about 25 years now confined at Central Prison-II, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Senthil Kumar

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, brother of the detenu Anbarasu @ Inba, S/o.Om Prakash, aged about 25 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 27.06.2023 slapped on his brother, 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. Though several grounds are raised in the petition, the learned counsel for the petitioner contended that the bail order in the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail, was obtained during COVID-19 situation and that placing reliance on such order shows the non-application of mind on the part of the Detaining Authority.

4. On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail in similar case in CrI.MP.No.10485/2021 passed by the Principal Sessions Court, Chennai. However, in the Booklet, it is seen that the bail order in the similar case was obtained during COVID-19 situation and bail was granted to the accused therein with a specific reference to COVID-19. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority to hold 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] 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 27.06.2023 in No.266/BCDFGISSSV/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Anbarasu @ Inba, aged 25 years S/o.Om Prakash, 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]
22.01.2024

ars



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Index : Yes / No

Neutral Citation : Yes / No



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