



H.C.P.No.1336 of 2023

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 connected with the detention order of the 2nd respondent in Memo.No.167/BCDFGISSSV/2023, dated 26.06.2023, and quash the same and direct the respondents to produce the body and person of the petitioner's husband namely Inbamathivathanan @ Inba, S/o.Yesuraja, aged about 36 years, detained in Central Prison, Puzhal, Chennai, before this Honble Court and set him at liberty.

For Petitioner : Mr.B.S.Manikandan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.Aravind C.

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

The petitioner, wife of the detenu Inbamathivathanan @ Inba, S/o.Yesuraja, aged about 36 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 26.06.2023 slapped on his brother, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug



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Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand 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 this petition, the learned counsel for the petitioner focussed mainly on the ground that the subjective satisfaction arrived at by the Detaining Authority that the detenu is likely to be released on bail, suffers from non-application of mind, since the bail order relied upon by the Detaining Authority is not similar to the present case, as the accused therein was granted bail after recording the fact that the accused therein was just an attestor to the sale deed, whereas, the allegation against the detenu in the present case is that he committed forgery and impersonation.



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4.On a perusal of the Booklet, it is seen that, in the similar case relied upon by the Detaining Authority, in CrI.O.P.No.3584 of 2021, dated 26.02.2021, the accused therein was granted bail after recording the fact that the accused is only an attestor to the sale deed. Whereas, the allegation against the detenu in the present case is that he committed forgery and impersonation. In the said circumstances, this Court is convinced that the subjective satisfaction arrived at by the Detaining Authority relying upon the said order, 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:-

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“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



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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 2nd respondent in Memo.No.167/BCDFGISSSV/2023, dated 26.06.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Inbamathivathanan @ Inba, S/o.Yesuraja, aged about 36 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

(S.S.S.R., J.) (S.M., J.)
24.11.2023

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Index : Yes / No

Neutral Citation : Yes / No

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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police/Detaining Authority,
Avadi City,
Avadi.
- 3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.
- 4.The Inspector of Police,
Central Crime Branch, Avadi,
Avadi.
- 5.The Public Prosecutor,
High Court, Madras.



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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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