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HCP.No.1375/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1375/2023

Rahamath Nisha

... Petitioner

Vs.

1.State of Tamil Nadu rep.by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai.

3.The Inspector of Police
Central Crime Branch, Chennai.

4.The Superintendent
Central Prison, Puzhal, Chennai.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records relating to petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide



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detention order dated 14.06.2023 on the file of the 2nd respondent herein made in proceedings No.230/BCDFGISSSV/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Mohammed Shek Illiyar aged 54 years son of Mohammed before this Court and set him at liberty now petitioner's husband detained at Central Prison, Puzhal, Chennai 600 066.

For Petitioner : Mr.C.C.Chellappan

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]

(1)The petitioner, wife of the detenu Mohammed Shek Illiyar, aged 54 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 14.06.2023 slapped on her husband, branding him as "Goonda" under the Tamil Nadu Act 14 of 1982.

(2)Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



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(3) Though several points have been raised in the petition, the learned counsel for the petitioner submitted that the Detaining Authority, in the Grounds of Detention, has mentioned in paragraph No.4 that the co-accused of the detenu was granted bail by this Court in CrI.OP.No.201/2022 and therefore, he inferred that the detenu is likely to be released on bail in relation to the ground case. He pointed out that the bail order in CrI.OP.No.201/2022 is not relating to the co-accused, but it is entirely a different case altogether.

(4) This Court, on a perusal of the Booklet, could affirm the statement of the learned counsel for the petitioner that the order in CrI.OP.No.201/2022 is not relating to the co-accused. Except reference to CrI.OP.No.201/2022, no other case is relied upon by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the ground case. Hence, the detention order is liable to be quashed on the ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail by relying upon the bail order granted in the so called similar case, suffers from non-application of mind.



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(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



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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."



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(6) In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment and in view aforesaid reason, 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 dated 14.06.2023 in No.230/BCDFGISSSV/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

[SSSRJ] [SMJ]
16.11.2023

AP
Internet : Yes



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To

- 1.The Secretary to Government,
State of Tamil Nadu
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- 2.The Commissioner of Police
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- 3.The Inspector of Police
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S.S. SUNDAR, J.,
and
SUNDER MOHAN, J.,

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