



H.C.P.No.1403 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1403 of 2023

Eswari

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai – 600 007.

3.The Inspector of Police,
G-1, Vepery Police Station,
Chennai.

4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai – 600 066.

... Respondents



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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 relating to the detention order in Memo. No.282/BCDFGISSSV/2023, dated 29.06.2023, passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Nirmalraj, S/o.Manivannan, aged about 23 years, the detenu, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set the petitioner's son Nirmalraj, S/o.Manivannan, aged about 23 years, the detenu herein at liberty.

For Petitioner : Mr.R.Muthukumar
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Aravind C.

ORDER

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

The petitioner, mother of the detenu Nirmalraj, S/o.Manivannan, aged about 23 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 29.06.2023, slapped on



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her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug 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 the petition, the learned counsel for the petitioner submitted that the Sponsoring Authority/Inspector of Police has given a report as if the petitioner herself has given a statement before the Inspector of Police to the effect that she is trying to get bail to the detenu. The learned counsel pointed out that the petitioner is a co-accused in Crime No.167 of 2023 and she has filed an application for Anticipatory Bail. Therefore, the learned counsel pointed out that it is not probable for the petitioner to appear before the Inspector of Police and give such a statement. The learned counsel also asserted that the petitioner did not give any such statement before the Inspector of Police as it was found in the



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report of the Sponsoring Authority. Hence, he submitted that the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind.

4.This Court finds force in the submissions of the learned counsel for the petitioner that it is improbable for the petitioner to have given a statement on 28.06.2023 before the Inspector of Police that she is taking steps to take the detenu out on bail in Crime Nos.167 and 168 of 2023, as seen from the Booklet, when an Anticipatory Bail filed by the petitioner, as a co-accused, is pending. Therefore, this Court is of the view that the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail, 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



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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 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



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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."

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 No.282/BCDFGISSSV/2023, dated 29.06.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Nirmalraj, S/o.Manivannan, aged about 23 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.)
11.12.2023

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Neutral Citation : Yes / No

To

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- 2.The Commissioner of Police,
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- 5.The Public Prosecutor,
High Court, Madras.



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