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HCP.No.1436/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1436/2023

Ambiga

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Petitioner

Versus

1.State of Tamil Nadu

rep.by the Additional Chief Secretary to
Government, Home, Prohibition & Excise
Department, Fort St George, Chennai 600 009.

2.The Commissioner of Police

The Greater Chennai City
Vepery, Chennai 600 007.

3.The Superintendent of Prison

Central Prison, Puzhal, Chennai 600066.

4.The Inspector of Police

R3 Ashok Nagar Police Station
Chennai.

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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



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to the detention order in Memo No.53/BCDFGISSSV/2023 dated 27.02.2023 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 husband Babu @ Diamond Babu, S/o.Duraisamy aged about 35 years, the detenu now confined in Central Prison, puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.E.Soundar Rajan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

- (1)The petitioner, wife of the detenu Babu @ Diamond Banu, aged 35 years, S/o.Raj, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 27.02.2023 slapped on her husband, 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



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the petitioner submitted that the Detaining Authority had arrived at the subjective satisfaction that the detenu is likely to be released on bail in the ground case by relying upon the bail granted to the very same detenu in the 1st adverse case in Crime No.51/2022 for the alleged offences u/s.294[b], 323 and 307 IPC. However, the offences in the ground case in Crime No.20/2023 are not similar as that of the adverse case since the offences are not similar.

(4) On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail passed in the 1st adverse case in Crime No.51/2022 in CrI.MP.No.4234/2022 by the learned Principal Sessions Judge, Chennai, to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the ground case. However, the offences in the 1st adverse case and in the ground case are not same or similar, so as to arrive at the subjective satisfaction. In the 1st adverse case, the detenu was charged for the offences u/s.294[b], 323 and 307 of IPC. Whereas, in the ground case, he was charged for the offences u/s.341, 323, 294[b], 506[ii], 307 of IPC apart from the offence u/s.4 of the Tamil Nadu Prohibition of Women Harassment Act. It is in the said



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circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority that the detenu is likely to be released on bail in the ground case, suffers from non-application of mind. Hence, on the above ground, the Detention Order 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 considered a case where it is stated that in the grounds of detention that relatives of detenu are taking action to take him on bail in the criminal case in which the detenu was in remand and that in similar cases, bail was granted by Courts. Since no details had been given about the alleged similar cases in which bail was allegedly granted by the Court concerned, it is held by Hon'ble Supreme Court that in the absence of details, the statement which is mere *ipse dixit*, cannot be relied upon and that itself is sufficient to 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 and there was no reliable material to this effect. Hence,



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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 reasons, this Court is of the view that the detention order is liable to be quashed.

(7) Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the 2nd respondent dated 27.02.2023 in BCDFGISSSV No.53/2023 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.

[S.S.S.R., J.] [S.M, J.]
18.10.2023

AP



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To
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- 1.The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
The Greater Chennai City
Vepery, Chennai 600 007.
- 3.The Superintendent of Prison
Central Prison, Puzhal, Chennai 600066.
- 4.The Inspector of Police
R3 Ashok Nagar Police Station
Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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