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H.C.P.No.1664 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1664 of 2023

Pushpa

Vs.

... Petitioner

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Home, Prohibition & Excise Department,
St.George Fort, Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
of Cuddalore District,
Cuddalore.
- 3.The Superintendent of Police,
Cuddalore District, Cuddalore – 1.
- 4.The Superintendent, Central Prison,
Cuddalore – 4.
- 5.The Inspector of Police,
Cuddalore New Town Police Station,
Cuddalore.

... Respondents



H.C.P.No.1664 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 leading to the order of detention passed by the 2nd respondent dated 16.07.2023 in C3/D.O./37/2023 against the petitioner's son Masilamani, S/o. Krishnan, aged 45 years, who is confined at Central prison, Cuddalore, and set aside the same and direct the respondents to produce the detenue before the Honble Court and set him at Liberty.

For Petitioner : Mr.Om Sai Ram
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 namely Masilamani, S/o.Krishnan, aged 45 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 16.07.2023 slapped on her son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law



H.C.P.No.1664 of 2023

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].

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

3.The learned counsel for the petitioner submits that 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 to the accused in a similar case, suffers from non-application of mind, as the accused in the similar case was granted statutory bail u/s.167[2] Cr.P.C., and not on merits.

4.On a perusal of the Booklet, this Court finds that the bail order in the similar case, i.e., C.M.P.No.364 of 2021, dated 02.06.2021, relates to release of the accused on bail u/s.167[2] of Cr.P.C., and not on merits. In other words, the accused therein was under judicial custody for 93 days and



H.C.P.No.1664 of 2023

hence, he was granted statutory bail under Section 167(2) Cr.P.C.

Therefore, this Court finds that the case relied upon by the Detaining Authority is not similar to the present case in which the detenu was arrested and the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail on the basis of the similar case relied upon by him, suffers from non-application of mind, which vitiates the detention order.

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. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail by referring to a bail order granted to the accused in a similar case, wherein, the said bail was granted on the ground that accused therein is entitled to statutory bail and not on merits.



Therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind.

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 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."

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 C3/D.O./37/2023, dated 16.07.2023, 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.)
18.12.2023



H.C.P.No.1664 of 2023

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SUNDER MOHAN, J.

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H.C.P.No.1664 of 2023

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Page 8 of 8