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H.C.P.No.1731 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.1731 of 2023

Radhika

... 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,

S-8, Adambakkam 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.295/BCDFGISSSV/2023 dated 06.07.2023 passed by the 2nd respondent under the TamilNadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Rajesh @ Kozhikal Rajesh, S/o. Ramachandran, aged about 38 years, the detainee, now confined in Central prison, Puzhal , Chennai before this Honble Court and set the petitioner's husband Rajesh @ Kozhikal Rajesh, S/o. Ramachandran aged about 38 years the detainee 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, wife of the detenu Rajesh @ Kozhikal Rajesh, S/o.Ramachandran, aged about 38 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 06.07.2023 slapped on her husband, branding him as "Goonda" under the



H.C.P.No.1731 of 2023

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 pointed out that the Detaining Authority has not applied his mind while expressing his subjective satisfaction that the detenu is also likely to be released on bail. It is his submission that the case relied upon by the Detaining Authority, is not similar to the present case, as the bail was granted in favour of the accused therein only by referring to Covid-19 pandemic.

4.On a perusal of the Booklet, this Court finds that the bail order passed in the case relied upon by the Detaining Authority, in



H.C.P.No.1731 of 2023

Crl.M.P.No.10485 of 2021, dated 26.05.2021, is not similar to the case on hand, since the accused therein was released on bail mainly by citing Covid-19. Therefore, this Court finds that the subjective satisfaction of the Detaining Authority is irrational and the detention order is liable to quashed on the ground of 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. 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 mainly by citing Covid-19 Pandemic. 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



H.C.P.No.1731 of 2023

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. In view of the aforesaid reason, the detention order passed by the 2nd respondent in BCDFGISSSV No.295/2023, dated 06.07.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Rajesh @ Kozhikal Rajesh, S/o. Ramachandran, aged about 38 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.)
18.12.2023



H.C.P.No.1731 of 2023

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To

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H.C.P.No.1731 of 2023

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Page 8 of 8