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H.C.P.No.1840 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1840 of 2023

V.Kowsalya
W/o Vijayakumar .. Petitioner

v.

1. State of Tamil Nadu represented
by Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009
2. The Commissioner of Police
Vepery, Chennai
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai
4. State rep by Inspector of Police
V-1, Villivakkam Police Station
Chennai District .. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Habeas Corpus, calling for the records of



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the 2nd respondent, pertaining to the order made in No.350/BCDFGISSSV/2023 dated 09.08.2023 in detaining the detenu under the Tamil Nadu Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely, Vijayakumar @ Viji, M/A-36, S/o Raj, who is detained at the Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner :: Mr.B.Balamurugan

For Respondents :: Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind, Advocate

ORDER

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

The petitioner, who is the wife of the detenu, namely, Vijayakumar @ Viji, aged 36 years, S/o Raj, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 09.08.2023 slapped on her husband, branding him as 'Goonda' under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law 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).



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2. Heard the learned counsel appearing 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 appearing for the petitioner confined his argument to the point that the detaining authority has relied upon the bail order passed in CrI.M.P.No.18439 of 2018 dated 01.11.2018 by the Principal Sessions Court, Chennai in respect of the accused in similar case, which is not similar to the case on hand, as the bail was granted to the accused therein by recording the fact that investigation was almost over. However, the facts for detention of the detenu in the ground case are not similar. Therefore, the detention order is liable to be set aside on the sole ground that the subjective satisfaction of the detaining authority suffers from non-application of mind.

4. On perusal of the records, this Court is convinced with the statement of the learned counsel for petitioner that the bail was granted to the accused therein on the ground that the investigation was almost over. However, the facts for detention of the detenu in the ground case are not



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similar to the case relied upon by the detaining authority while arriving at the subjective satisfaction. It is also relevant to point out that the Hon'ble Supreme Court in the case of ***Rekha v. State of Tamil Nadu through Secretary to Government and another, (2011) 5 SCC 244***, has held that 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. It is relevant to extract paragraph Nos.10 and 11 of the said judgment of the Hon'ble Supreme Court, as follows:-

“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."

In view of the judgment of the Hon'ble Supreme Court in Rekha's case, this Court finds that the impugned detention order is liable to be quashed.

5. Accordingly, the detention order passed by the 2nd respondent dated 09.08.2023 in No.350/BCDFGISSSV/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Vijayakumar @ Viji, S/o Raj, aged 36 years, is directed to be set at liberty forthwith, unless he is required in connection with any other case.



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(S.S.S.R.,J.) (S.M.,J.)

20.12.2023

Index : yes/no

Neutral citation : yes/no

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To

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