



H.C.P.No.1914 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1914 of 2023

R.Nithya

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Tambaram City.

3.The Superintendent, Central Prison,
Puzhal, Chennai – 66.

4.The Inspector of Police,
Law and Order,
T-2, Chrompet Police Station,
Chennai.

... 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 passed by the second respondent pertaining to the order made in BCDFGISSSV No.39/2023, dated 29.08.2023, to detain the detenu under 2(F) of Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondent to produce the detenu R.Raghukumar @ Raghu, Son of Ramalingam, aged about 41 years, who is detained at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan

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

ORDER

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

The petitioner, wife of the detenu namely R.Raghukumar @ Raghu, Son of Ramalingam, aged about 41 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated



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29.08.2023 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 the petitioner pointed out that the bail order relied upon by the Detaining Authority is not similar to the case on hand, by referring to the fact that bail was granted to the accused therein, since there was no adverse case as against him, whereas, there are three adverse cases as against the detenu herein. Therefore, the learned counsel submitted 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.



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4.On a perusal of the Booklet, this Court finds that, in the similar case relied upon by the Detaining Authority, i.e., the bail order in CrI.M.P.No.5200 of 2021, dated 20.10.2021, it is stated that the accused therein had no bad antecedent. However, on a perusal of the Grounds of Detention, this Court finds that the detenu has three adverse cases even according to the Detaining Authority. Hence, this Court is of the view that the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail, by relying upon the aforesaid similar case, suffers from non-application of mind.

5.Learned counsel for the petitioner further submitted that the Special Report of the Sponsoring Authority is not dated and that the statement of the Sponsoring Authority that the relatives of the detenu are taking steps to take the detenu out on bail, which is also relied upon by the Detaining Authority, is not supported by any statement under Section 161 Cr.P.C. made by such relatives before the Sponsoring Authority. Hence, the learned counsel for the



petitioner raised a *bona fide* doubt as to when the Special Report was submitted by the Sponsoring Authority. The learned counsel further pointed out that, unless the Special Report relied upon by the Sponsoring Authority is immediately before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the Detaining Authority based on this undated report, would vitiate the Detention Order.

6.It is seen from records that the Special Report of the Sponsoring Authority, enclosed in the Booklet, is not dated. On a perusal of the Grounds of Detention, it is seen that, in Para No.4, the Detaining Authority has observed that “*the Sponsoring Authority has stated that it is learnt that R.Raghukumar @ Raghu's relatives are taking steps to take him out on bail in the above case by filing bail application in appropriate Court*”, and based on the same, has arrived at the subjective satisfaction that the detenu is likely to be released on bail. There are no such statements of the relatives of the detenu, enclosed in the Booklet. When the Special Report of the Sponsoring Authority is not dated, the veracity of such report becomes doubtful. The compelling necessity to detain the detenu would also depend



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on when the report was sent. In the absence of the date, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective satisfaction of the Detaining Authority based on such undated material, suffers from non-application of mind.

7.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. 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."

8. For the foregoing reasons, this Court is of the view that the detention



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order is liable to be quashed.

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9. Accordingly, the detention order passed by the 2nd respondent in BCDFGISSSV No.39/2023, dated 29.08.2023, 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.)
22.12.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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High Court, Madras.



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