



H.C.P.No.2001 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 08.11.2023

CORAM :

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

H.C.P.No.2001 of 2023

Prema

W/o Rajendiran

..

Petitioner

v.

1. The State of Tamil Nadu
rep.by its Additional Chief Secretary to Government
Prohibition and Excise Department (Home)
Fort St.George
Chennai 600 009
2. The District Collector and District Magistrate
Thiruvarur District
Thiruvarur
3. The Superintendent of Police
Thiruvarur District
Thiruvarur
4. The Superintendent of Prison
Central Prison
Tiruchirappalli



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5. The Inspector of Police
Kalappal Police Station
Thiruvarur District

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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 pertaining to the detention order dated 27.02.2023 in C.O.C.No.12/2023 passed by the 2nd respondent and issue direction to produce the body of the detenu namely (Ragul, S/o Rajendran aged 23 years) presently confined at Central Prison, Tiruchirappalli before this Hon'ble Court and set him at liberty forthwith and quash the same.

For Petitioner :: Mr.Swami Subramanian

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 mother of the detenu, namely, Ragul, aged 23 years, S/o Rajendran, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 27.02.2023 slapped on her son, branding him as 'Goonda' under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug



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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 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 petitioner submitted that the detention order is liable to be quashed on the sole 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 that case was granted statutory bail under Section 167(2) of Cr.P.C., and not on merits.

4. In paragraph-4 of the grounds of detention, the detaining authority has stated that there is a real possibility of the detenu coming out on bail in the ground case, since bail was granted to the accused in a similar case, by



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relying upon an order passed by the learned Judicial Magistrate, Needamangalam, in CrI.M.P.No.334 of 2020, dated 29.05.2020. On perusal of page-173 of the booklet, this Court finds that the order passed in similar case relates to enlarging the accused on bail under Section 167(2) of Cr.P.C., and not on merits. Therefore, the subjective satisfaction of the detaining authority regarding the possibility of the detenu coming out on bail in the ground case, suffers from non-application of mind, as enunciated by 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**, holding 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 hereunder:-

“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."

5. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 27.02.2023 in C.O.C.No.12/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Ragul, S/o



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Rajendran, aged 23 years, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : yes/no

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

(S.M.,J.)

Neutral citation : yes/no

08.11.2023

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To

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