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H.C.P.No.1975 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.1975 of 2023

Banumathi

... Petitioner

Vs.

1. Government of Tamil Nadu,
Represented by its Secretary,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
2. The District Collector and District Magistrate,
Tiruvannamalai District, Tiruvannamalai.
3. The Superintendent of Police,
Tiruvannamalai District.
4. The Superintendent of Prison,
The Central Prison,
Vellore.



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5.The Inspector of Police,
Kalasapakkam Police Station,
Tiruvannamalai District.

... Respondents

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 in D.O.No.81/2023-C2, dated 29.08.2023, on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the petitioner's son Ezhilarasu, aged 30 years, S/o.Karunakaran, who is now confined in Central Prison, Vellore, before this Hon'ble Court and set him at liberty.

For Petitioner	:	Mr.S.Silambuselvan
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, who is the mother of the detenu Ezhilarasu, aged 30 years, S/o.Karunakaran, has come forward with this petition challenging the



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detention order passed by the 2nd respondent dated 29.08.2023 slapped on her son, 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 this petition, the learned counsel for the petitioner focussed mainly on the ground that the subjective satisfaction arrived at by the Detaining Authority that the detenu is likely to be released on bail, suffers from non-application of mind, since the bail order relied upon by the Detaining Authority is not similar to the present case, as the accused therein was granted bail after recording the fact that there was no serious objection on the side of the prosecution.

4.This Court, on a perusal of the Booklet, finds that, in the similar



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case relied upon by the Detaining Authority, viz., bail order in Crl.M.P.No.705 of 2022, dated 21.03.2022, bail was granted to the accused therein after recording the fact that there was no serious objection on the side of the prosecution. Therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail, by relying upon the aforesaid case, suffers from non-application of mind, and therefore, the Detention Order is vitiated.

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. 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:-



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“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



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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 D.O.No.81/2023-C2, dated 29.08.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Ezhilarasu, aged 30 years, S/o.Karunakaran, 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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5. The Inspector of Police,
Kalasapakkam Police Station,
Tiruvannamalai District.
6. The Public Prosecutor,
High Court, Madras.



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