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H.C.P.No.1986 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM :

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

H.C.P.No.1986 of 2023

Kavitha
W/o Senthil

..

Petitioner

v.

1. The Secretary to Government
Government of Tamil Nadu (Home)
Prohibition and Excise Department
Fort St.George
Chennai 600 009
 2. The District Magistrate and District Collector
Namakkal District
 3. The Superintendent of Police
Namakkal District, Namakkal
 4. The Superintendent
Central Prison, Salem
 5. The Inspector of Police
Ayilpatty Police Station
Namakkal District
- .. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the records relating to the impugned order C.M.P.No.2/Sexual Offender/2023 (M1) dated 21.03.2023 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce namely Senthil, Son of Arappuli, aged about 38 years, now confined at Central Prison, Salem, before this Hon'ble Court set him at liberty.

For Petitioner :: Mr.S.Panneer Selvan

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, Senthil, aged 38 years, S/o Arappuli, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 21.03.2023 slapped on her husband, branding him as 'Sexual Offender' under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders,



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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 the petitioner pointed out that the detaining authority has relied upon the bail order passed by this Court in Crl.O.P.No.2773 of 2022 dated 04.02.2022 in respect of the accused therein, which is not similar to the offence alleged against the detenu in the ground case, as bail was granted to the accused in similar case for the offence under Sections 366, 376 of IPC read with Section 67 of the Information Technology (Amendment) Act, 2008. Whereas the detenu herein has been charged for the offence under Sections 457, 380, 376 and 302 of IPC in the ground case. 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.



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4. This Court perused page-103 of the booklet and is convinced with the statement of the learned counsel for petitioner that the bail was granted to the accused in similar case for the offence under Sections 366, 376 of IPC read with Section 67 of the Information Technology (Amendment) Act, 2008. Whereas the detenu herein has been charged for the offence under Sections 457, 380, 376 and 302 of IPC in the ground case. Therefore, the subjective satisfaction of the detaining authority suffers from non-application of mind. 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. 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 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



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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



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Court finds that the impugned order is liable to be quashed.

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5. Accordingly, the detention order passed by the 2nd respondent dated 21.03.2023 in C.M.P.No.2/Sexual Offender/2023 (M1) is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Senthil, S/o Arappuli, aged 38 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

23.11.2023

ss

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5. The Inspector of Police
Ayilpatty Police Station
Namakkal District

6. The Public Prosecutor
High Court, Madras



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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

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