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H.C.P.No.2040 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

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THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.2040 of 2023

S.Sukunya

... Petitioner

Vs.

- 1.State of Tamil Nadu rep. By
The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.State of Tamil Nadu rep. By
The Commissioner of Police,
Greater Chennai Police, Tamil Nadu.
- 3.State of Tamil Nadu rep. By
The Superintendent of Prisons,
Central Prison, Puzhal, Tamil Nadu.
- 4.State of Tamil Nadu rep. By
The Inspector of Police,
P-6 Kodungaiyur Police Station,
Tamil Nadu.

... Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the
records pertaining to the order of detention dated 30.03.2023
passed by the second respondent in TDPA: 4247 in Memo
No.90/BCDFGISSSV/2023 and quash the same and produce Suresh,



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son of Kumar, male, aged about 28 years, who is detained in Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.Senthil Kumar
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 Suresh, has come forward with this petition challenging the detention order passed by the second respondent dated 30.03.2023 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].

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



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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 order passed in CrI.M.P.No.10485 of 2021 dated 26.05.2021 by the Court of Sessions at Chennai, which is not similar to the ground case alleged against the detenu. The learned counsel pointed out that bail was granted to the accused in similar case only after recording the Covid-19 pandemic situation. Therefore, the detention order is liable to be set aside on the sole ground that 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.

4. We find merits on the submissions of the learned counsel for petitioner. This Court has held in several cases that the detention order is vitiated if there is no application of mind as to the real ground on which the bail was granted to the accused in similar case. 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



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vitate 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 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."*



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5. In view of the position of law enunciated by the Hon'ble Supreme Court in Rekha's case, this Court, concurring with the statement of the learned counsel for petitioner on facts that the impugned detention order is vitiated for non-application of mind, is inclined to allow the habeas corpus petition.

6. Accordingly, the detention order passed by the second respondent dated 30.03.2023 in No.90/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Suresh, S/o.Kumar, aged about 28 years, 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.)
17.11.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai Police, Tamil Nadu.
- 3.The Superintendent of Prisons,
Central Prison, Puzhal, Tamil Nadu.



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4.The Inspector of Police,
P-6 Kodungaiyur Police Station,
Tamil Nadu.

5.The Public Prosecutor,
High Court, Madras.



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