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H.C.P.No.2250 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.2250 of 2023

Tasin Fathima

... Petitioner

Vs.

- 1.The State Rep. by,
The Commissioner of Police,
Greater Chennai Police,
Chennai.
- 2.The Additional Chief Secretary,
Home, Prohibition and Excise Department,
St. George Fort,
Chennai.
- 3.The Superintendent of Central Prison,
Puzhal Prison,
Chennai.
- 4.The Inspector of Police,
R-6 Kumaran Nagar Police Station (Crime),
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 calling for the records in connection with the order of detention dated 23.08.2023 bearing No.376/BCDFGISSSV/2023 passed by the 1st respondent against petitioner's husband i.e detenu (Hussainkhan @ Hussain, S/o.Mohamed Khan, about 35 years) confined at Central Prison, Puzhal, Chennai, and set aside the same, consequently direct the 1st to 4th respondents to produce the body of the detenu before this Court and set him at liberty.

For Petitioner : Mr.J.Ashish

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 Hussainkhan @ Hussain, S/o.Mohamed Khan, about 35 years, has come forward with this petition challenging the detention order passed by the 1st respondent, dated 23.08.2023 slapped on her husband, branding him as "Goonda" under the



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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 there was only one adverse case as against the accused therein in the similar case, whereas, there are two 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.19198 of 2021, dated 27.10.2021, it is stated that the accused therein had one previous case. However, on a perusal of the Grounds of Detention, this Court finds that the detenu has two 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. 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.



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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."

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. Accordingly, the detention order passed by the 1st respondent, dated 23.08.2023 bearing No.376/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Hussainkhan @ Hussain, S/o. Mohamed Khan, about 35 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.)
22.12.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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Chennai.
- 2.The Additional Chief Secretary,
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High Court, Madras.



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