



WEB COPY



HCP.No.44 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.44 of 2024

Veerasamy

... Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Ranipet District,
Office of the District Collector and District Magistrate,
Ranipet.

3.The Superintendent of Prison,
Central Prison,
Salem.

4.The Superintendent of Police,
Office of the Superintendent of Police,
Salem.

5.The Inspector of Police,
Arakkonam Taluk Circle,
Ranipet.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the 2nd respondent dated 30.11.2023 in B3/D.O.No.58/2023, detaining the detenu under Section 3(2) of Tamil Nadu Act 14 of 1982, as a Drug Offender, quashing the same and consequently setting the detenu/petitioner's son Nanda @ Nandakumar, S/o.Veerassamy, aged about 22 years, now detained at Central Prison, Salem, at liberty.

For Petitioner : Ms.G.Bharathi

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

The petitioner herein, who is the father of the detenu namely Nanda @ Nandakumar, aged about 22 years, has come forward with this petition challenging the detention order passed by the second respondent dated 30.11.2023 slapped on his son, branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law



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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, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner submitted that while drawing inference that the detenu is likely to come out on bail, the Detaining Authority has placed reliance on a bail order passed in Crl.M.P.No.565 of 2023 on 06.06.2023, in which bail was granted on the ground that there was no previous case against the accused therein. However, in the remand application, which has been supplied to the detenu, a reference has been made to the detenu being involved in 5 other criminal cases. In view of the same, the similar case relied upon by the Detaining Authority in the detention order is not similar and therefore, there is a non-application of mind on the part of the Detaining Authority.



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4. On a perusal of the Grounds of Detention, it is seen that in the order that was relied upon by the Detaining Authority in CrI.M.P.No.565 of 2023 dated 06.06.2023, the accused therein was granted bail on the ground that there was no previous case against him. However, on perusal of the booklet, it is seen from the remand application that a reference has been made to the detenu that he is involved in five other criminal cases. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind, as the similar case relied upon by them cannot be termed to be similar. Hence, on the above ground, the Detention Order is liable to be quashed.

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



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quashed. It is relevant to extract paragraph Nos.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.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming



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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 second respondent on 30.11.2023 in B3/D.O.No.58/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Nanda @ Nandakumar, aged about 22 years, S/o.Veerassamy, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J] [S.M., J]

28.03.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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- 6.The Public Prosecutor,
High Court, Madras.



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