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HCP.No.78 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM :

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

H.C.P.No.78 of 2024

Ezha

... Petitioner

Vs.

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St.George, Chennai.
- 2.The District Collector and District Magistrate,
Vellore District, Vellore-9.
- 3.The Superintendent of Police,
Vellore District, Vellore.
- 4.The Superintendent,
Central Prison, Vellore, Vellore District.
- 5.The Inspector of Police,
Vellore North (L&O) Police Station,
Vellore District, Vellore.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Habeas Corpus, calling for the records relating to the impugned order C3/D.O.No.82/2023 dated 24.08.2023 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce namely Mubarak, aged about 25 years, S/o.Ezha, now confined at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodhkumar

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 Mubarak, aged about 25 years, has come forward with this petition challenging the detention order passed by the second respondent dated 24.08.2023, slapped on his son, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic



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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 are raised in the petition, the learned counsel for the petitioner pointed out that the Detaining Authority has not applied its mind while expressing its subjective satisfaction that the detenu is also likely to be released on bail. It is his submission that the case relied upon by the Detaining Authority, is not similar to the present case, as the bail was granted in favour of the accused therein only by referring to Covid-19 pandemic.

4. On a perusal of the Booklet, this Court finds that the bail order passed in the case relied upon by the Detaining Authority, in CrI.M.P.No.1191/2020, dated 03.07.2020, is not similar to the case on hand, since the accused therein was released on bail mainly by citing



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Covid-19. Therefore, this Court finds that the subjective satisfaction of the Detaining Authority is irrational and the detention order is liable to be quashed on the ground of 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'***, had 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 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



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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.”

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.



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7. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 24.08.2023 in C3/D.O.No.82/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mubarak, aged about 25 years, S/o.Ezha, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[M.S.R., J]

[S.M., J]

22.02.2024

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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