



H.C.P.No.111 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM:

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

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Catherine

...Petitioner/Wife of the Detenu

Vs.

1.The Government of Tamil Nadu,
Rep. by its Addl. Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai.

3.The Superintendent,
Central Prison, Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai.

...Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the



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records, related to the proceedings of the second respondent in B.C.D.F.G.I.S.S.S.V.No.603 of 2023 dated 21.11.2023 against the petitioner's husband Vasudevan Male, aged about 23 S/o. Elangovan and quash the same and consequently direct the respondents herein to produce the detenu who is detained under the Tamil Nadu Act 14 of 1982 currently confined at Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.D.Sugumar

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

ORDER

*(Order of the Court was made by **M.S.RAMESH, J.**)*

The petitioner, who is the wife of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 21.11.2023 slapped on her husband, branding him as "Goonda" under the 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. The detaining authority, by referring to the ground case in which



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the detainee was involved, had come to the conclusion that he had acted in a manner prejudicial to the maintenance of public order. After holding so, he had referred to the bail application moved by the detainee and thereby inferred that it is very likely of his coming out on bail, after which he will indulge in such activities, which will be prejudicial to the maintenance of public order.

4. Merely because the detainee has moved a bail application or has a right to move a bail application and thereby drawing an inference that he is likely to come out on bail and thereafter involve in illegal activities, which could be prejudicial to the maintenance of public order, would not be sufficient enough for the detaining authority to arrive to a subjective satisfaction that there is a compelling necessity to detain him under Act 14. This ratio has already been considered by the Hon'ble Supreme Court in the case of *Ramesh Yadav Vs. District Magistrate, Etah and others* reported in *(1985) 4 SCC 232*, wherein it was held that if the detaining authority infers the likelihood of bail being granted to a detainee, the option available to the concerned authority is to either oppose the bail application before it is ordered or challenge the bail order in a higher forum after it is granted. Thus,



merely because a detainee possesses a right to make a bail application or has a right to move a bail application, it will not suffice the authority to infer his likelihood of coming out on bail and thereby come to a subjective satisfaction to detain him under preventive detention. The observations in *Ramesh Yadav's case*, on this aspect, are as follows:-

“6. on a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detainee was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed. We are inclined to agree with counsel for the petitioner that the order of detention in the circumstances is not sustainable and is contrary to the well settled principles indicated by this Court in a series of cases relating to preventive detention. The impugned order, therefore, has to be quashed.”



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4. By applying the ratio laid down in the aforesaid decision, we are of the affirmed view that the inference drawn by the detaining authority, by making a reference to the pending bail application and thereby arriving at a subjective satisfaction that his detention is imminent, cannot be legally sustainable.

5. Accordingly, the detention order passed by the 2nd respondent in B.C.D.F.G.I.S.S.V.No.603 of 2023 dated 21.11.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu 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]
26.03.2024

Index: Yes/No
Speaking order/Non-speaking order
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and
SUNDER MOHAN, J.

hvk

To

- 1.The Addl Chief Secretary to Government,
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- 3.The Superintendent,
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- 5.The Public Prosecutor,
High Court, Madras.

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