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H.C.P.No.215 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.215 of 2024

Ganthimathi

... Petitioner

Vs.

1.The Secretary to Government
Home, Prohibition & Excise Department
Fort St. George
Chennai 600 009

2.The District Collector and
District Magistrate Kanchipuram District
Kanchipuram

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

4.The Superintendent of Police
Kanchipuram District

5.The Inspector of Police
Walajabad Police Station
Kancheepuram District

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, call for records in connection with the order of Detention passed by the second respondent dated 07.01.2024 in Rc.no.269/2023/M6-D.O.No.04/2024 against the petitioner's son Thiru Adithya, Male aged about 20 years, Son of Babu, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For petitioner : Mr.M.Illiyas

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

ORDER

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

The petitioner herein, who is the mother of the detenu namely Thiru. Adithya, aged about 20 years, S/o.Babu, has come forward with this petition challenging the detention order passed by the second respondent dated 07.01.2024 slapped on her 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



H.C.P.No.215 of 2024

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 submitted that the subjective satisfaction of the detaining authority that the detenu is likely to come out on bail suffers from non application of mind, as the similar case relied upon by the detaining authority is not similar.

4. It is seen from the grounds of detention that the detaining authority has relied upon a bail order passed by the District and Sessions Court, Kancheepuram, in C.M.P.No.1942 of 2021 dated 19.11.2021, in Crime No.1573 of 2021, for an accused in the said case. On a perusal of the said order, we find that the said case cannot be said to be similar since the accused therein was released on bail after a long period of incarceration and



H.C.P.No.215 of 2024

after his detention order under GOONDAS Act was quashed. Therefore, the said case cannot be said to be similar. Hence, the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu is likely to come out on bail 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 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 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



H.C.P.No.215 of 2024

is liable to be quashed.

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7. Accordingly, the detention order passed by the second respondent in Rc.no.269/2023/M6-D.O.No.04/2024 dated 07.01.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiru.Adithya, Male, aged about 20 years, S/o.Babu, presently detained at Central Prison, Puzhal, Chennai 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]
10.06.2024

kas

Index: Yes/No

Neutral Citation: Yes/No

To

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6/8



H.C.P.No.215 of 2024

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5.The Inspector of Police
Walajabad Police Station
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6.The Public Prosecutor
High Court of Madras
Chennai 600 104



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H.C.P.No.215 of 2024

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H.C.P.No.215 of 2024

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