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H.C.P.No.435 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.435 of 2024

E.Nagalakshmi

... Petitioner/mother of the detenue

Vs.

1.The State rep. by the Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The District Collector and District Magistrate,
District Collector Office,
Ariyalur & District.

3.The Superintendent of Police,
District Police Office,
Ariyalur & District.

4.The Superintendent,
Central Prison, Tiruchirappalli & District.

5.The Inspector of Police,
All Women Police Station,
Jayankondam,
Ariyalur District.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the



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Constitution of India, praying for the issuance of Writ of Habeas Corpus, to call for the records on the file of the second respondent in Cr.M.P.No.28/2023 dated 21.12.2023 and direct the respondents to produce the petitioner's son, the detenu herein, namely Vijai, Male, aged 29 years, son of Elangovan, now confined at Central Prison, Tiruchirappalli, before this Court and set aside the same and set him at liberty.

For Petitioner : Mr.R.Sivaraman

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, who is the mother of the detenu viz., Vijai, aged 29 years, son of Elangovan, confined at Central Prison, Tiruchirappalli, has come forward with this petition challenging the detention order passed by the second respondent dated 21.12.2023 slapped on her son, branding him as "Sexual Offender" under the 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].



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WEB COPY 2. Heard the learned counsel for the petitioner and 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 would mainly focus his arguments on the following grounds:

(i) The Detaining Authority has arrived at a subjective satisfaction that the relatives of the detenu are taking steps to file a bail application before the appropriate Court in the ground case in Crime No.28/2023. However, in the materials supplied along with the order of detention, there are no materials available as to how the Detaining Authority has arrived at the subjective satisfaction that the relatives of the detenu are taking steps to file bail application; and

(ii) The Detaining Authority has relied upon the order passed in Cr.M.P.No.4085 of 2022 dated 20.10.2022 and came to the conclusion that in a similar case bail has been granted and that there is a likelihood of the detenu to be released on bail. The learned counsel for the petitioner therefore submitted that the order relied upon by the Detaining Authority is not similar and there is non application of mind on the part of the



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Detaining Authority.

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4. Heard the learned counsel on either side and perused the materials on record.

5. While arriving at a subjective satisfaction, the Detaining Authority has stated that the detenu's relatives are taking steps to file a bail application. However, in the booklet supplied, there are no materials whatsoever to arrive at a subjective satisfaction that the detenu's relatives are taking steps to file a bail application. The said statement of the Detaining Authority is a mere *ipse dixit*. It is also seen that in the order that was relied upon by the Detaining Authority in Cr.M.P.No.4085 of 2022, the accused therein was enlarged on bail for the offences under Sections 366, 376(2n), 376(2L) and 506(ii) IPC on the ground that the investigation had been completed and final reported had been filed. However, in the present case, it is not so. Hence, the order that was relied upon by the Detaining Authority cannot be considered to be an order passed in a similar case. On these grounds, the order of detention is liable to be interfered with.



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6. In the light of the above discussion, we have no hesitation in quashing the order of detention on the ground of non application of mind on the part of the Detaining Authority.

7. Accordingly, the detention order passed by the second respondent, in Cr.M.P.No.28/2023, dated 21.12.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Vijai, aged 29 years, son of Elangovan, confined at Central Prison, Tiruchirappalli, 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]
24.04.2024

Index: Yes/No
Speaking/Non-speaking order

Anu



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

Anu

To

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

2.The District Collector and District Magistrate,
District Collector Office,
Ariyalur & District.

3.The Superintendent of Police,
District Police Office,
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4.The Superintendent,
Central Prison, Tiruchirappalli & District.

5.The Inspector of Police,
All Women Police Station,
Jayankondam,
Ariyalur District.

6.The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.

7.The Public Prosecutor,
High Court, Madras.

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