

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM :

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

H.C.P.No.320 of 2024

Savithiri

... Petitioner/wife of the detenu

Vs.

1.State Rep by
The Secretary to Government, Home,
Prohibition and Excise Department,
Secretariat, Chennai-600 009.

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

3.The Superintendent,
Central Prison, Puzhal,
Chennai.

4.The Inspector of Police,
V-3, J.J.Nagar Police Station,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, to call for the records in Memo

No.538/BCDFGISSSV/2023 passed by the second respondent dated 02.11.2023 and set aside the same and direct the respondents to produce the detenue viz., Purushothaman, S/o.Venkatesan, aged about 27 years, who is now detained in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Swamidoss Manokaran

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 wife of the detenu viz., Purushothaman, S/o.Venkatesan, aged about 27 years, detained at Central Prison, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the second respondent dated 02.11.2023, slapped on her husband, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law 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 are raised in this petition, the learned counsel for the petitioner focused mainly on the ground that the subjective satisfaction of the Detaining Authority that the relatives of the detenu are taking steps to take out the detenu on bail, suffers from non-application of mind, as the statement under 161 Cr.P.C., said to have been made by the petitioner's relative before the Sponsoring Authority, is not dated. Hence, the learned counsel for the petitioner raised a *bona fide* doubt as to when this statement was obtained from the petitioner's relative. The learned counsel further pointed out that, unless the statement relied upon by the Sponsoring Authority is immediately before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the Detaining Authority based on this undated statement, would vitiate the Detention Order.

4. It is seen from records that the statement obtained by the Sponsoring Authority from the petitioner's relative, enclosed in the Booklet, stating that he is planning to file a bail application to bring out the detenu on bail, is not dated. On a perusal of the Grounds of Detention, it is seen that, in Para No.4, the Detaining Authority has observed that the Sponsoring Authority has stated that he came to understand that the relatives of the detenu are taking steps to take him out on bail by filing bail application before the appropriate Court and has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the statement obtained by the Sponsoring Authority from the relative of the detenu stating that he is planning to file bail application to bring out the detenu on bail is not dated, the veracity of such statement becomes doubtful. The compelling necessity to detain the detenu would also depend on when the statement was obtained. In the absence of the date, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective satisfaction of the Detaining Authority based on such undated material, 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 is liable to be quashed.

7. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 02.11.2023 in Memo No.538/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus

Petition is allowed. The detenu viz., Purushothaman, S/o.Venkatesan, aged about 27 years, detained at Central Prison, Puzhal, Chennai, 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]

19.03.2024

Index: Yes/No

Neutral Citation: Yes/No

Anu

To

1.The Secretary to Government, Home,
Prohibition and Excise Department,
Secretariat, Chennai-600 009.

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

3.The Superintendent,
Central Prison, Puzhal,
Chennai.

4.The Inspector of Police,
V-3, J.J.Nagar Police Station,
Chennai.

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

6.The Public Prosecutor,
High Court, Madras.

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