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H.C.P.No.335 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM :

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

H.C.P.No.335 of 2024

Kalaiselvi

... Petitioner

Vs.

1.The Principal Secretary to Government
Home, Prohibition and Excise Dept.,
Secretariat
Chennai 600 009

2.The Commissioner of Police
Avadi City

3.The Superintendent of Prison
Central Prison, Puzhal
Chennai - 66

4.The Inspector of Police, Law and Order
T-6, Avadi Police Station
Chennai

... Respondents

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



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order of Detention passed by the second respondent dated 04.01.2024 in Memo No.01/BCDFGISSSV/2024 against the petitioner's husband Somasundaram Ganesh, Male aged 53 years, S/o.Raja, 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.S.Senthilvel

For Respondents : Mr.A.Gokulakrishnan
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 Thiru. Somasundaram Ganesh, aged 53 years, S/o.Raja, has come forward with this petition challenging the detention order passed by the second respondent dated 04.01.2024 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].



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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 Special Report of the Sponsoring Authority, as well as the entire pages of the paper booklet furnished by the Detaining Authority, are not dated. Hence, the learned counsel raised a *bona fide* doubt as to when the documents were obtained and as to the date on which the Special Report was sent by the Sponsoring Authority to the Detaining Authority. The learned counsel further pointed out that, unless the Special Report of the Sponsoring Authority is immediately placed before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the Detaining Authority based on these undated documents, would vitiate the Detention Order.



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4. It is seen from the records that the Special Report of the Sponsoring Authority is not dated. Further, the statements obtained by the Sponsoring Authority from the relatives of the detenu, enclosed in the Booklet, stating that they are planning to file bail application to bring out the detenu on bail, are also not dated. On a perusal of the Grounds of Detention, it is seen that the Detaining Authority has stated that the Sponsoring Authority came to understand that the relatives of the detenu are taking steps to take him out on bail by filing bail applications before the appropriate Court and has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the statements obtained by the Sponsoring Authority from the relatives of the detenu stating that they are planning to file bail application to bring out the detenu on bail, are not dated and even the Special Report of the Sponsoring Authority is not dated, the veracity of the Report becomes doubtful. The compelling necessity to detain the detenu would also depend on when the Sponsoring Authority has sent his Report. In the absence of the report, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective



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satisfaction arrived at by the Detaining Authority based on such undated materials, 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



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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.



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7. Accordingly, the detention order passed by the second respondent on 04.01.2024 in No.01/BCDFGISSSV/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiru. Somasundaram Ganesh, aged 53 years, S/o.Raja, is directed to be set at liberty forthwith, unless his presence is required in connection with any other case.

[M.S.R., J] [S.M., J]
04.06.2024

Index: Yes/No
Neutral Citation

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T-6, Avadi Police Station
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5.The Public Prosecutor
High Court of Madras
Chennai 600 104

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