



WEB COPY



H.C.P.No.342 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.342 of 2024

A.Sharmila

... Petitioner/wife of the detainee

Vs.

1.State represented by its
Home Secretary to the Government of Tamil nadu,
Home Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai-600 003.

3.The Inspector of Police,
H-3, Thandaiyarpur Police Station,
Thandaiyarpur, Chennai.

4.The Superintendent of Prison,
Central Prison,
Puzhal.

... Respondents

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



H.C.P.No.342 of 2024

to call for the records in relating to the order of detention passed by the second respondent dated 22.01.2024 in No.44/BCDFGISSSV/2024 against the petitioner's husband, the detainee, Anandan, Male, aged about 37 years, son of Dhandapani, who is confined at Central Prison, Puzhal and set aside the same and direct the respondents to produce the detainee before this Court and set him at liberty.

For Petitioner : Mr.T.Perinbanathan

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 wife of the detenu viz., Anandan, aged about 37 years, son of Dhandapani, confined at Central Prison, Puzhal, has come forward with this petition challenging the detention order passed by the second respondent dated 22.01.2024 slapped on her husband, branding him as "Goonda" 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].



H.C.P.No.342 of 2024

2. Heard the learned counsel for the petitioner and the learned

Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner pointed out that the Detaining Authority has not applied its mind while expressing its subjective satisfaction that the detenu is also likely to be released on bail. It is his submission that the case relied upon by the Detaining Authority is not similar to the present case, as the Sections under which the accused therein was charged are not similar to the Sections charged against the detenue in the ground case.

4. On a perusal of the Booklet, this Court finds that the bail order relied upon by the Detaining Authority in C.M.P.No.5203 of 2023, is not similar to the case on hand, since the accused therein was charged with offence under Sections 24(1) Cigarette and other Tobacco Products Act 2003 and Section 328 IPC, whereas in the ground case, the detenue was charged under Sections 272, 273, 328 IPC and 6(a) r/w 24(1) of Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Act 2003 and 7 & 9 (ii) of Tamil Nadu Prohibition of



Smoking and Spitting Act 2002 and 77 of Juvenile Justice (Care and Protection of Children) Act, 2015. Considering the nature of the bail order in the similar case relied upon by the Detaining Authority and the case on hand, this Court finds that the subjective satisfaction of the Detaining Authority that the detenu is also likely to be released 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 paragraphs 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.”



H.C.P.No.342 of 2024

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. Accordingly, the detention order passed by the second respondent in No.44/BCDFGISSSV/2024, dated 22.01.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Anandan, aged about 37 years, son of Dhandapani, confined at Central Prison, Puzhal, 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]

14.06.2024

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

Anu



H.C.P.No.342 of 2024

WEB COPY To

1.Home Secretary to the Government of Tamil nadu,
Home Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai,
Chennai-600 003.

3.The Inspector of Police,
H-3, Thandaiyarpur Police Station,
Thandaiyarpur, Chennai.

4.The Superintendent of Prison,
Central Prison,
Puzhal.

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

6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.342 of 2024

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

Anu

H.C.P.No.342 of 2024

14.06.2024