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HCP.No.394 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM :

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

H.C.P.No.394 of 2024

S.Sudalaimuthu

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government Home
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.State Rep by
The Commissioner of Police,
Greater Chennai.

3.State Rep by Inspector of police (Law & Order)
V-7, Nelambur Police Station,
Nelambur – 600 095,
Chennai.

4.The Superintendent of Prison,
Central Prison – Puzhal,
Puzhal, Chennai – 600 066.

... 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 connection with



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the order of detention passed by the 2nd Respondent in Memo No.36/BCDFGISSSV/2024 dated 18.01.2024 against the petitioner brother Thiru.Marimuthu @ Mari @ Alikudi Mari aged 37 years son of Sankaravel Devar who is confined at Central Prison, Puzhal, Chennai, under Section 3(1) of the Tamil Nadu Act 14/82 vide Detention order dated 18.01.2024 and set aside the same, direct the respondents to produce the detenue before this Hon'ble Court and set him at liberty.

For Petitioner	: Mr.Mohammed Saifullah for Mr.D.Balaji
For Respondents	: Mr.A.Gokulakrishnan, Additional Public Prosecutor

ORDER

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

The petitioner herein, who is the brother of the detenu namely Marimuthu @ Mari @ Alikudi Mari, aged about 37 years, S/o. Sankaravel Thevar, has come forward with this petition challenging the detention order passed by the second respondent dated 18.01.2024 slapped on his brother, branding him as "Goonda" under the Tamil Nadu



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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 the petition, the learned counsel for the petitioner mainly focused on the ground that the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind, as the order relied upon by the Detaining Authority is not similar to the case on hand. Referring to the similar order relied upon by the Detaining Authority, learned counsel for the petitioner pointed out that the bail was granted to the accused therein on the ground that the period for taking the accused therein under custodial interrogation was over and a major part of the investigation might have been completed by that time.



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4. On a perusal of the Booklet, this Court finds that, in the similar case relied upon by the Detaining Authority i.e., in CrI.M.P.No.18439 of 2018, dated 01.11.2018, the bail was granted to the accused therein by taking into consideration that the period for taking the accused therein under custodial interrogation was over and a major part of the investigation might have been completed by that time. However, it is not so in the case on hand. Therefore, the subjective satisfaction arrived at by the Detaining Authority on the basis of the said order that the detenu is 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'***, had 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



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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.”



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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 18.01.2024 in No.36/BCDFGISSSV/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Marimuthu @ Mari @ Alikudi Mari, aged about 37 years, S/o. Sankaravel Thevar, 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]

21.06.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Tsg

To

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