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H.C.P.No.400 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM :

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

H.C.P.No.400 of 2024

Malar

... Petitioner

Vs.

1.State rep. By:
The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai - 9

2.The Commissioner of Police
Salem City

3.The Superintendent of Prison
Central Prison
Salem

4.The Inspector of Police
Hasthampatty Police Station
Salem District

... 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



H.C.P.No.400 of 2024

C.M.P.No.122/Goonda/Salem City/2023 dated 29.12.2023 on the file of the second respondent and quash the detention as illegal and direct the respondents to produce the detenu, Thiru.Udhayakumar @ Chinnathambi, S/o.Muthu, aged about 40 years, now confined at Central Prison, at Salem, before this Court and set him at liberty forthwith.

For Petitioner : M/s.S.Sengkodi

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 sister of the detenu, Udhayakumar @ Chinnathambi, S/o.Muthu, aged 40 years, confined at Central Prison, Salem, has come forward with this petition challenging the detention order passed by the second respondent dated 29.12.2023 slapped on her brother, 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].



H.C.P.No.400 of 2024

WEB COPY

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 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 co-accused had been released on bail thereof, and on that ground, bail was granted in favour of the accused therein.

4. On a perusal of the Booklet, this Court finds that the bail order relied upon by the Detaining Authority in C.M.P.Nos.106 and 107 of 2020, is not similar to the case on hand, since the accused therein was granted bail after recording the fact that co-accused had been released on bail thereof. 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.



H.C.P.No.400 of 2024

WEB COPY

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



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H.C.P.No.400 of 2024

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. Accordingly, the detention order passed by the second respondent in C.M.P.No.122/Goonda/Salem City/2023, dated 29.12.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz.,



H.C.P.No.400 of 2024

Udhayakumar @ Chinnathambi, S/o.Muthu, aged 40 years, confined at

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H.C.P.No.400 of 2024

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

Central Prison, Salem, 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]
10.06.2024

kas

Index : Yes / No

Neutral Citation

To

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Home, Prohibition and Excise Department
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High Court of Madras
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H.C.P.No.400 of 2024