



HCP.No.429 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM:

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

H.C.P.No.429 of 2024

S.Aathilakshmi

...Petitioner/Wife of Detenu

Vs.

1.The Secretary to Government,
Home, Prohibition & Excise (XVI) Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
O/o.Commissioner of Police,
Greater Chennai.

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

4.The Inspector of Police,
Choolaimedu Police Station,
Chennai District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order in No.479/BCDFGISSSV/2023 dated: 16.10.2023 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of petitioner husband one named Mr.Siva @ Current Siva S/o. Raja, aged about 27 years now confined at Central Prison, Puzhal, before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizhselvakumar

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., Siva @ Current Siva S/o. Raja, aged about 27 years now confined at Central Prison, Puzhal, has come forward with this petition challenging the detention order passed by the second respondent dated 16.10.2023, 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,



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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 points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail by relying upon the bail order granted to the accused in a similar case, suffers from non-application of mind.

4. The Detaining Authority had relied upon an order passed in Crl.M.P. No.2054 of 2023, by this Court to infer that bail is likely to be granted to the detenu. However, on perusal of the order passed in Crl.M.P.No.2054 of 2023 dated 30.01.2023, this Court finds that there is only one previous case against the accused therein and hence, the bail was granted to him, whereas, in the



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instant case, the detenu has three adverse cases. Therefore, the said order relied upon by the Detaining Authority to infer that in similar cases bail has been granted, suffers from non application of mind, since the accused therein was not on a similar footing as that of the detenu. This issue is also covered by the Hon'ble Supreme Court in ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in **2011 [5] SCC 244.**

The

relevant observations are as follows:-

"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,



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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."

5. 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.

6. In view of the aforesaid reason, the detention order passed by the second respondent dated 16.10.2023 in No.479/BCDFGISSSV/2023 , is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Siva @ Current Siva, S/o.Raja, aged about 27 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.



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[M.S.R., J] [S.M., J]
26.03.2024

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
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To

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- 5.The Public Prosecutor,
High Court, Madras.



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