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HCP.No.446 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM :

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

H.C.P.No.446 of 2024

Suganthi

... Petitioner/wife of the detenue

Vs.

1.The State of Tamilnadu,
Represented by Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector and District
Magistrate of Cuddalore District,
Cuddalore.

3.The Superintendent of Police,
Cuddalore District.

4.The Superintendent of Police,
Central Prison, Cuddalore.

5.The Inspector of Police,
Vadalur Police Station,
Cuddalore District.

... Respondents



HCP.No.446 of 2024

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the detention order dated 14.11.2023 passed by the second respondent in C3/D.O./74/2023 and quash the same and direct the respondents herein to produce the petitioner's husband viz., Sathish, S/o.Subbu Baidu, aged 47 years, who is presently undergoing detention in the Central Prison, Cuddalore before this Court and set him at liberty forthwith.

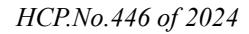
For Petitioner : Ms.M.Udayavani

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., Sathish, S/o.Subbu Baidu, aged 47 years, detained at Central Prison, Cuddalore, has come forward with this petition challenging the detention order passed by the second respondent dated 14.11.2023 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,



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 bail order relied upon by the Detaining Authority is not similar to the case on hand, by referring to the fact that bail was granted to the accused therein mainly on the ground that the co-accused was granted bail. Therefore, the learned counsel submitted 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.

4. On a perusal of the Booklet, this Court finds that, in the similar case relied upon by the Detaining Authority, i.e., CrI.M.P.No.5147 of 2023, the accused therein was granted bail mainly on the ground that the co-accused had been granted bail. This apart, the detainee has got two adverse



HCP.No.446 of 2024

cases. Hence, this Court is of the view that the subjective satisfaction of the Detaining Authority that the detenu is also likely to be released on bail, by relying upon the aforesaid similar case, 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



WEB COPY



HCP.No.446 of 2024

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.”

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



HCP.No.446 of 2024

is liable to be quashed.

WEB COPY

7. Accordingly, the detention order passed by the second respondent on 14.11.2023 in C3/D.O./74/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Sathish, S/o.Subbu Baidu, aged 47 years, who is presently undergoing detention in the Central Prison, Cuddalore, 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]

27.03.2024

(1/2)

Index: Yes/No

Anu

To

1.The Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector and District
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HCP.No.446 of 2024

3.The Superintendent of Police,
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4.The Superintendent of Police,
Central Prison, Cuddalore.

5.The Inspector of Police,
Vadalur Police Station,
Cuddalore District.

6.The Public Prosecutor,
High Court, Madras.



WEB COPY



HCP.No.446 of 2024

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H.C.P.No.446 of 2024

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