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HCP.No.491 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM :

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

H.C.P.No.491 of 2024

Prema

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai – 600 077.

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

4.The Inspector of Police,
R-9, Valasaravakkam 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 records relating to the Detention Order vide Memo No.662/BCDFGISSSV/2023 Dated 13.12.2023, passed by the Second Respondent and quash the same and direct the respondents herein to produce the petitioner's husband namely Manikchand, S/o.Amarchand, aged 41 years, (who is presently under going detention in the central prison, Puzhal, Chennai), before this Hon'ble Court and set him at liberty.

For Petitioner	: Mr.R.Parthiban
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 namely Manikchand, aged about 41 years, S/o.Amarchand, has come forward with this petition challenging the detention order passed by the second respondent dated 13.12.2023 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 grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his arguments on the ground that the Detaining Authority has relied upon the order passed in CrI.M.P.No.5203 of 2023 dated 03.11.2023 and came to the conclusion that in a similar case, bail has been granted and that there is a likelihood of the detenu also to be released on bail. The learned counsel for the petitioner further submitted that the offences in the order relied upon by the Detaining Authority in the grounds of detention and the offences involved in the present case are not similar and therefore, there is a non-application of mind on the part of the Detaining Authority.

4. On a perusal of the Grounds of Detention, it is seen that in the order that was relied upon by the Detaining Authority in CrI.M.P.No.5203



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of 2023 dated 03.11.2023, the accused therein was enlarged on bail for the offences under Sections 24(1) of COTP Act and Section 328 of IPC, however, in the present case, the offences involved are under Sections 272, 273, 328 of IPC and 6, 24(1) of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 r/w Sec.7, 9(ii) of Tamil Nadu Prohibition of Smoking Act and Spitting Act 2003 and Section 77 of Juvenile Justice (Care and Protection of Children) Act, 2015. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind, as the offences mentioned in the similar case and the offences involved in the detenu's case are different. Hence, on the above ground, the Detention Order is liable to be quashed.

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



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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 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.



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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 on 13.12.2023 in No.662/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiru.Manikchand, aged about 41 years, S/o.Amarchand, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[M.S.R., J]

[S.M., J]

12.04.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Tsg



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High Court, Madras.



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