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H.C.P.No.572 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.572 of 2024

Durka

... Petitioner

Vs.

1.The Additional Chief Secretary to Government
Home Prohibition & Excise Department
Secretariat
Chennai 600 009

2.The Commissioner of Police
Greater Chennai
Chennai District

3.The Superintendent of Prison
Central Prison
Puzhal
Chennai

4.The Inspector of Police
C-5, Kothaval Chavadi Police Station
Chennai District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, calling for the records in connection with



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the order of detention passed by the 2nd respondent dated 29.12.2023 in BCDFGISSSV No.710 of 2023 against the petitioner's husband Vijay @ Monkey Vijay, Son of Krishnan, aged about 31 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Samson

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by C.Aravind

ORDER

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

The petitioner herein, who is the wife of the detenu Thiru. Vijay @ Monkey Vijay, aged 31 years, S/o.Krishnan, has come forward with this petition challenging the detention order passed by the second respondent dated 29.12.2023 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, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].



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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 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 fact that the 1st similar case filed in Crime No.113 of 2023 for the offences u/s.457, 380 IPC is not similar to the offences found in the ground case, which suffers from non-application of mind.

4. On a perusal of the grounds of detention, this Court finds that the detaining authority has relied upon the bail orders passed in two similar cases to arrive at the subjective satisfaction that the detenu is likely to come out on bail. The 1st order relied upon by the detaining authority is an order passed by the learned Judicial Magistrate No.II, Poonamallee, in C.M.P.No.5076 of 2018 in Crime No.113 of 2023 for the offences under Section 457 and 380 I.P.C. The offences alleged against the detenu in the ground case are 294(b), 341, 323, 392 and 506(ii) I.P.C. Since the offences



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in Crime No.113 of 2023 and the offences in the ground case are different, this Court finds that the subjective satisfaction of the detaining authority that the detenu is likely to come out on bail by relying upon the said 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 in respect of the co-accused in the same case,



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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 is liable to be quashed.



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7. Accordingly, the detention order passed by the 2nd respondent in No.710//BCDFGISSSV/2023 dated 29.12.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiru. Vijay @ Monkey Vijay, aged about 31 years, S/o.Krishnan, 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]
10.06.2024

kas

Index : Yes / No
Neutral Citation

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5.The Public Prosecutor
High Court of Madras
Chennai 600 104

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