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H.C.P.No.687 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

and

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.687 of 2024

S.Kavitha

... Petitioner

Vs.

1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Fort St. George
Chennai 600 009

2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai

3.The Superintendent of Police
Central Prison
Puzhal, Chennai

4.The Inspector of Police
Cyber Crime Police Station (Team C)
Central Crime Branch
Vepery, Chennai

... Respondents



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Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed by the second respondent in his proceedings in No.27/BCDFGISSSV/2024, dated 11.01.2024 and quash the same as illegal and produce the detenu namely SUDHIR TANDON, S/o.Chandra Mohan, aged 39 years, as Cyber Law Offender, now he is confined in Central Prison, Puzhal-II, Chennai before this Court and set him at liberty.

For Petitioner : Mr.C.Raja
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 is the wife of the detenu viz., Sudhir Tandon, aged 39 years, S/o.Chandra Mohan, confined at Central Prison, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the second respondent dated 11.01.2024 slapped on him, branding her husband as "Cyber Law Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,



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Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. Heard the learned counsel for the petitioner and 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 bail was granted in favour of the accused therein only by referring to Covid-19 pandemic. Apart from that there is one adverse case as against the petitioner herein.

4. On a perusal of the Booklet, this Court finds that the bail order passed in the case relied upon by the Detaining Authority, in CrI.O.P.No.12258, 12480, 12481 & 12482 of 2020, dated 21.08.2020, is not similar to the case on hand, since the accused therein was released on



bail mainly by citing Covid-19. This apart, the petitioner herein has got one adverse case. Therefore, this Court finds that the subjective satisfaction of the Detaining Authority is irrational and the detention order is liable to quashed on the ground of 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. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail by referring to a bail order granted to the accused in a similar case, wherein, the said bail was granted mainly by citing Covid-19 Pandemic. Therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. 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 No.10 and 11 of the



said judgment of the Hon'ble Supreme Court:-

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“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.

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



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cannot be sustained."

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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 Memo No.27/BCDFGISSSV/2024, dated 11.01.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Sudhir Tandon, Male, aged 39 years, S/o.Chandra Mohan, who is confined at Central Prison, Puzhal, Chennai, 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]

13.06.2024

Index: Yes/No

Neutral Citation: Yes/No

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3.The Superintendent of Police
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4.The Inspector of Police
Cyber Crime Police Station (Team C)
Central Crime Branch
Vepery, Chennai

5.The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.

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



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