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HCP.No.764 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM :

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

H.C.P.No.764 of 2024

Mrs.Ambiga

... Petitioner

Vs.

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

2.The Commissioner of Police,
Greater Chennai.

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

4.The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai.

... Respondents

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



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order of Detention passed by the second respondent dated 04.01.2024 in No.07/BCDFGISSSV/2024 against the petitioner Son Thiru.Shanmugam @ Shanmuganathan, Male aged about 28 years Son of Narayanan, who is confined at Central Prison Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner	: Mr.M.Illiyas
For Respondents	: Mr.E.Raj Thilak, Additional Public Prosecutor assisted by Mr.C. Aravind

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

The petitioner herein, who is the mother of the detenu Shanmugam @ Shanmuganathan, aged 28 years, S/o.Narayanan, has come forward with this petition challenging the detention order passed by the second respondent dated 04.01.2024 slapped on her son, 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 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.18431 of 2021, dated 21.10.2021, the accused therein was granted bail mainly on the ground that the co-accused had been granted bail. 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.



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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, 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



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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.

7. Accordingly, the detention order passed by the second respondent on 04.01.2024 in No.07/BCDFGISSSV/2024, is hereby set aside and the



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Habeas Corpus Petition is allowed. The detenu viz., Shanmugam @
Shanmuganathan, aged 28 years, S/o.Narayanan, 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]

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Index: Yes/No

Tsg



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M.S.RAMESH, J.
and
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