



HCP.No.1276 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM :

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

H.C.P.No.1276 of 2024

Vaitheeswari

... Petitioner

Vs.

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

2.The Commissioner of Police
Greater Chennai

3.The Superintendent of Prison
Special Prison for Women
Puzhal, Chennai -66

4.The Inspector of Police (L & O)
B-1, North Beach Police Station
Chennai

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records in



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connection with the order of detention passed by the second respondent dated 23.12.2023 in No.691/BCDFGISSSV/2023 against the petitioner's mother Jayalakshmi, Female, aged 44 years, W/o.Murugan, who is confined at Special Prison for Women, Puzhal, Chennai and set aside the same and direct the respondents to produce the detainee before this Court and set her at liberty.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

The petitioner, who is the daughter of the detainee viz.Jayalakshmi, aged about 44 years, W/o.Murugan, who is confined at Special Prison for Women, Puzhal, Chennai, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 23.12.2023 slapped on her mother, branding her as "Drug Offender" under the Tamil Nadu Act 14 of 1982.



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2.Heard the learned counsel for the petitioner and the learned

Additional Public Prosecutor appearing for the respondents.

3.Though several points 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 bail order granted to the accused in a similar case, suffers from non-application of mind.

4.In paragraph No.4 of the Grounds of Detention, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in the ground case since in a similar case, bail was granted to the detenu therein and relied upon an order passed by the Principal Special Court under E.C. & NDPS Act, Chennai in CrI.MP.No.5272/2023. On a perusal of the said order in page No.187 of the Booklet, this Court finds that the said order relates to release of the accused on bail u/s.167[2] of Cr.P.C., since the accused therein had been in prison for more than 60 days and not on merits.



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Therefore, it is not a similar case and the subjective satisfaction of the Detaining Authority, regarding the possibility of the detenu coming out on bail suffers from non-application of mind, which vitiates the detention order.

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 an accused in a similar case in CrI.MP.No.5272/2023. However, the said bail was granted on the ground that accused is entitled to statutory bail and not on merits and therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. Hence, on the above grounds, the Detention Order is liable to be quashed.



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6.In view of the aforesaid reason, the detention order passed by the 2nd

respondent dated 23.12.2023 in No.691/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenue viz. Jayalakshmi, aged about 44 years, W/o.Murugan, confined presently at Special Prison for Women, Puzhal, Chennai is directed to be set at liberty forthwith unless her confinement is required in connection with any other case.

[M.S.R., J]

[S.M., J]

27.06.2024

kas

Index : Yes / No
Neutral Citation

To

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Home, Prohibition and Excise Department
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2.The Commissioner of Police
Greater Chennai



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High Court of Madras
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