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H.C.P.No.983 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
and

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.983 of 2024

Gangagowri

... Petitioner

Vs.

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

2.The District Collector and
District Magistrate
Tirupathur District
Tirupathur

3.The Superintendent of Police
Tirupathur District
Tirupathur

4.The Superintendent of Police
Central Prison
Vellore

5.The Inspector of Police



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Jolarpettai Police Station
Tirupathur District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records in C3/D.O.No.18/2024 dated 16.04.2024 on the file of the District Collector and District Magistrate, Tirupathur District, Tirupathur, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thiru Ayyappan, S/o.Duraisamy, aged about 29 years, now confined at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.S.Sengkodi

For Respondents : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

ORDER

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

The petitioner herein, who is the wife of the detenu viz. Thiru. Ayyappan, aged about 29 years, S/o.Duraisamy, has come forward with this petition challenging the detention order passed by the 2nd respondent



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dated 16.04.2024 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].

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 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 for the offence under Section 417, 420 IPC and Section 15(3) of Indian Medical Council Act, 1956, whereas the ground case was registered for the offence under Section 419, 420 IPC r/w 15(3) of IMC Act, 1956 and 23(1), 25 Pre-conception and Pre-Natal Diagnostic Techniques (Prevention of sex Selection) Act



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1994 and @ to Section 419, 420 IPC r/w 15(3) of IMC Act, 1956 and 23(1), 25 Pre-conception and Pre-Natal Diagnostic Techniques (PROHIBITION of sex Selection) Act 1994.

4. On a perusal of the Booklet, this Court finds that the bail order relied upon by the Detaining Authority in CrI.M.P.No.4504 of 2023 is not similar to the case on hand, since the accused therein was granted bail for the offence registered under Section Section 417, 420 IPC and Section 15(3) of Indian Medical Council Act, 1956, however, the present ground case registered against the detenu herein is for the offence committed under Section 419, 420 IPC r/w 15(3) of IMC Act, 1956 and 23(1), 25 Pre-conception and Pre-Natal Diagnostic Techniques (Prevention of sex Selection) Act 1994 and @ to Section 419, 420 IPC r/w 15(3) of IMC Act, 1956 and 23(1), 25 Pre-conception and Pre-Natal Diagnostic Techniques (PROHIBITION of sex Selection) Act 1994. Considering the nature of the bail order relied upon by the Detaining Authority and the case on hand, this Court finds that the subjective satisfaction of the Detaining Authority that the detenu is also likely to be released on bail, 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 practice of most courts that if a co-accused



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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 2nd respondent in C3/D.O.No.18/2024 dated 16.04.2024, is hereby set aside and the Habeas



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Corpus Petition is allowed. The detenu viz., Thiru.Ayyappan, aged about 29 years, S/o.Duraisamy, 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]
31.07.2024

kas

Index : Yes / No
Neutral Citation

Note :- Registry shall forthwith return the booklet containing the materials, on which, the Detaining Authority has placed reliance, to the petitioner/counsel for the petitioner with due acknowledgment.

To

1.The Secretary to Government
Home, Prohibition and Excise Department
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