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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.1118 of 2024

Durga ... Petitioner

Vs.

1.The State Rep. by Secretary to Government
Home, Prohibition and Excise Dept.,
Secretariat
Chennai 600 009

2.The Commissioner of Police
Tambaram City

3.The Inspector of Police
T-7, Otteri Police Station
Tambaram

4.The Superintendent
Central Prison
Puzhal ... Respondents

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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 2nd respondent on 15.04.2024 in BCDFGISSSV No.63 / 2024 and to quash the same and direct the respondents to produce the body of the detenu Durairaj, S/o.Palani, aged about 37 years before this Court and set him at liberty, now detained at Central Prison, Puzhal.

For Petitioner : Mr.C.Iyapparaj

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 Thiru. Durairaj, aged 37 years, S/o.Palani, has come forward with this petition challenging the detention order passed by the second respondent dated 15.04.2024 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,

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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 this petition, the learned counsel for the petitioner focused mainly on the ground that the subjective satisfaction of the Detaining Authority that the relatives of the detenu are taking steps to take out the detenu on bail, suffers from non-application of mind, as the Special Report of the Sponsoring Authority, as well as the entire pages of the paper booklet furnished by the Detaining Authority, are not dated. Hence, the learned counsel raised a *bona fide* doubt as to when the documents were obtained and as to the date on which the Special Report was sent by the Sponsoring Authority to the Detaining Authority. The learned counsel further pointed out that, unless the Special Report of the Sponsoring Authority is immediately placed before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the

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Detaining Authority based on these undated documents, would vitiate the Detention Order.

4. It is seen from the records that the Special Report of the Sponsoring Authority is not dated. On a perusal of the Grounds of Detention, it is seen that the Detaining Authority has stated that the Sponsoring Authority came to understand that the relatives of the detenu are taking steps to take him out on bail by filing bail applications before the appropriate Court and has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the Special Report of the Sponsoring Authority is not dated, the veracity of the Report becomes doubtful. The compelling necessity to detain the detenu would also depend on when the Sponsoring Authority has sent his Report. In the absence of the report, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective satisfaction arrived at by the Detaining Authority based on such undated materials, suffers from non-application of mind.

5. The Hon'ble Supreme Court, in the case of ***'Rekha Vs. State of***

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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 has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is*

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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 15.04.2024 in BCDFGISSSV No.63/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiru. P.Durairaj,

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aged 37 years, S/o.Palani, 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

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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

Secretary to Government
Home, Prohibition and Excise Dept.,
Secretariat
Chennai 600 009

2.The Commissioner of Police
Tambaram City

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

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