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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM :

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

H.C.P.No.1137 of 2024

Tamilselvi .. Petitioner/
Mother of the detenu

Versus

1. The Secretary to the Government,
   Home Prohibition and Excise Dept.,
   Secretariat, Chennai - 600 009.

2. District Collector & District Magistrate,
   Cuddalore District, Cuddalore.

3. The Superintendent of Police,
   Cuddalore District, Cuddalore.

4. The Superintendent of Prison,
   Central Prison, Cuddalore.

5. The Inspector of Police,
   Neyveli Township Police Station,
   Cuddalore District. .. Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the

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records in connection with the order of detention passed by the second respondent dated 27.04.2024 in C3/D.O.No.33/2024 against the petitioner, son of Uthandarajan, male, aged 29 years, S/o.Subramaniyan, who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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

ORDER

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

The petitioner herein, who is the mother of the detenu namely Uthandarajan, aged about 29 years, S/o.Subramaniyan, has come forward with this petition challenging the detention order passed by the second respondent dated 27.04.2024 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 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 by recording the fact that no previous case as against the accused therein.

4. On a perusal of the Booklet, this Court finds that the bail order relied upon by the Detaining Authority in Crl.M.P.No.7650 of 2023, is not similar to the case on hand since the accused therein was granted bail after recording the fact that no previous case was reported against the accused therein. However, it is admitted that there are 2 adverse cases as against the detenu herein. Considering the nature of the bail order in the similar case relied upon by the Detaining Authority and the case on hand, this Court finds that the subjective satisfaction of the Detaining Authority that the

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detenu is also likely to be released on bail, suffers from 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. 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*

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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 cannot be sustained.**"*

6. The learned Additional Public Prosecutor placed reliance on a recent decision of the Hon'ble Full Bench of this Court in the case of ***'N.Fathima @ Laila Vs. The State of Tamil Nadu'*** passed in ***H.C.P.(MD) No.1121 of 2022 and batch.,*** and submitted that when the similar case relied upon in the grounds of detention by the authority for drawing inference that the detenu is likely to come out on bail, is not similar to the ground case for which he has been detained, the same will not be fatal to the

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detention order, as the said ground would be severable in terms of Section 5-A of the Tamil Nadu Act 14 of 1982.

7. However, in the recent decision in ***'Jayalakshmi Vs. The State of Tamil Nadu' [HCP No.330 of 2024 dated 16.04.2024]***, we had observed that the observations made by the Hon'ble Full Bench in that regard, cannot be reconciled with the judgments of the Hon'ble Supreme Court. The relevant portions of the order read as follows:-

> *"9. Firstly, that was not the question referred to the Hon'ble Full Bench for its consideration. The observations in this regard, relating to Section 5-A of the Tamil Nadu Act 14 of 1982, in our view, are therefore not binding and cannot be treated as ratio decidendi. In the case of ADM Jabalpur Vs. Shivkant Shukla reported in (1976) 2 SCC 521, the Hon'ble Supreme Court had held that a decision on a point, not necessary for the purpose of, or which does not fall to be determined in that decision, becomes an obiter dictum. Hence, such a point in the decision, would not be an authority for a proposition which did not fall for its consideration, as held in the case of Zee Telefilms Ltd. And Another Vs. Union of India reported in (2005) 4 SCC 649.*
>
> .....

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12. Therefore, even though in Ankit Ashok Jalan's case [cited supra], the observations in Rekha's case [cited supra] were distinguished on facts, the requirement to record the satisfaction that the detenu is likely to come out on bail, was reiterated. This requirement is mandated when detention orders are clamped on persons who are in custody. When such a satisfaction is a pre-requisite, to pass a detention order against a person in custody any infirmity in the satisfaction would certainly vitiate the detention order. Such being the legal position enunciated by the Hon'ble Supreme Court, the observations made by the Hon'ble Full Bench that a defect in the said satisfaction would not vitiate the detention order, cannot be reconciled with the judgments of the Hon'ble Supreme Court.

.....

14. As stated earlier in order to pass a detention order against a person in custody, the detaining authority must be satisfied that a detenu is likely to be released on bail and on being released on bail, is likely to indulge in same prejudicial activities. When this satisfaction is sine qua non, any defect in such satisfaction would render the detention order illegal. Hence, the observations made by the Hon'ble Full Bench of this Court, regarding severability of the ground under Section 5-A of the Tamil Nadu Act 14 of 1982, cannot be reconciled with the aforesaid judgments of the

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Hon'ble Supreme Court, which are binding on us. However, the judgment of the Hon'ble Full Bench is certainly an authority for the proposition that non supply of materials relating to the similar case relied upon by the detaining authority, would not vitiate the detention order. 15. In the present case, there is a defect in the subjective satisfaction."

8. The aforesaid extracts are self explanatory. As such, the objections of the learned Additional Public Prosecutor in this regard, would not be sustainable.

9. Accordingly, the detention order passed by the second respondent on 27.04.2024 in C3/D.O./33/2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu namely Uthandarajan, aged about 29 years, S/o.Subramaniyan, 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]
02.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

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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 the Government,
   Home Prohibition and Excise Dept.,
   Secretariat, Chennai - 600 009.

2. District Collector & District Magistrate,
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3. The Superintendent of Police,
   Cuddalore District, Cuddalore.

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6. The Public Prosecutor,
   High Court of Madras.

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