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H.C.P.No.1185 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS.JUSTICE N.MALA

H.C.P.No.1185 of 2024

R.Devika

... 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,
Office of the Commissioner of Police,
Vepery,
Chennai – 600 007.

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

4.The Inspector of Police, (Crime),
V-6, Kolathur Police Station,
Chennai.

... Respondents



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Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, to call for the records in No.421/BCDFGISSSV/2024 dated 28.4.2024 by the second respondent herein and quash the same as illegal and consequently direct the respondents to produce the detenu Thiru.Rajkumar, son of Kothandapani, aged about 51 years, who is now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.Anbuchezeiyan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The order of detention passed by the 2nd respondent in No.421/BCDFGISSSV/2024 dated 28.04.2024 is sought to be quashed in the present Habeas Corpus Petition.

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.



3. The Special Report submitted by the authorities / respondents is undated. Thus, it raises a doubt. The statement has been relied upon by the Detaining Authority to form an opinion that there is likelihood of detenu coming out on bail. When the statement itself is unreliable, the formation of opinion should go.

4. The Hon'ble Supreme Court of India, in the case of ***Rekha vs. State of Tamil Nadu through Secretary to Government and Another¹***, 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. The relevant paragraphs 10 and 11 are extracted hereunder;

“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

1. 2011 (5) SCC 244



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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 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.”

5. The Detaining Authority must be subjectively satisfied for invoking the Act 14 of 1982. Undated Statement obtained cannot be relied upon for



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the purpose of forming an opinion that there is likelihood of causing breach of public order. The lauder objectives of the preventive detention law are to be looked into, while issuing such an order of preventive detentions, which infringes the personal liberty of a citizen.

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. Hence, for the aforesaid reason, the Detention Order passed by the 2nd respondent in No.421/BCDFGISSSV/2024 dated 28.04.2024 is quashed and the Habeas Corpus Petition is allowed. The detenue viz., Rajkumar, S/o.Kothandapani, male aged about 51 years, who is confined at Central Prison, Puzhal, Chennai, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.] [N.M., J.]
19.09.2024

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Index : Yes
Speaking order
Neutral Citation : Yes



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To
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Madras High Court.



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and
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