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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.1501 of 2024

Palaniammal ... Petitioner

Vs.

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

2.The Commissioner of Police, Salem City
Salem District

3.The Superintendent
Central Prison, Salem 636 007

4.State: rep. by the Inspector of Police
AWPS Ammapet Police Station
Salem District
(Crime No.58 of 2023) ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records leading to the detention of petitioner's son, the detenu Thiru.Mini @ Manikandan, aged

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26 years, son of Rajendran, Door No.15, Bharathiar Street, 1st Cross, Jothi Theatre backside, Ammapet, Salem, presently detained in Central Prison, Salem under Act 14/1982, branded as 'sexual offender' vide the detention order dated 19.12.2023 in C.M.P.No.114 / sexual offender / Salem City / 2023, on the file of the 2nd respondent herein, directing to produce the person or body of the detenu Thiru.Mini @ Manikandan, aged 26, son of Rajendran, before the Court and thereafter set him at liberty from the Central Prison, Salem by setting aside the above order.

For Petitioner : Mr.B.Vasudevan

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 viz. Thiru. Mini @ Manikandan, aged about 26 years, S/o.Rajendran, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 19.12.2023 slapped on her son, branding him as "Sexual Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest

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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 341, 506(1) IPC and Section 7 & 8 of the Protection of Children from Sexural Offences Act, 2012, whereas the present ground case is registered for the offence under Section 363 IPC r/w 7, 8, 9(m) & 10 of Protection of Child from Sexual Offences Act, 2012.

4. On a perusal of the Booklet, this Court finds that the bail order

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relied upon by the Detaining Authority in Crl.M.P.No.221 of 2020 is not similar to the case on hand, since the accused therein was granted bail for the offence registered under Section 341, 506(1) IPC and Section 7 & 8 of the Protection of Children from Sexural Offences Act, 2012. However, the present ground case registered against the detenu herein for the offence under Section 363 IPC r/w 7, 8, 9(m) & 10 of Protection of Child from Sexual Offences Act, 2012. 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.

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

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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 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*

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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 C.M.P.No.114/Sexual Offender/Salem City/2023 dated 19.12.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiru.Mini @ Manikandan, aged about 26 years, S/o.Rajendran, 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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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

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

2.The Commissioner of Police, Salem City
Salem District

3.The Superintendent
Central Prison
Salem 636 007

4.The Inspector of Police
AWPS Ammapet Police Station
Salem District
(Crime No.58 of 2023)

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

M.S.RAMESH, J.

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and
SUNDER MOHAN, J.

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