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H.C.P.No.1621 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.1621 of 2024

Mr.Thalla Venkata Sai Kumar

... Petitioner

Vs.

1.The Additional Chief Secretary to the Government,
Home Prohibition and Excise Department,
Chennai – 600 009.

2.Commissioner of Police,
Greater Chennai,
Vepery,
Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison-II,
Puzhal,
Chennai – 600 066.

4.The Inspector of Police,
F-5, Choolaimedu 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, directing the respondents produce the body of the detenu Mr.Talla Srinivasalu Reddy, Age 27 Years S/o.Pethakotty Reddy, who is detained in Central prison II, Puzhal, Chennai, before this Court and pass an order to call for the records of detention order passed by the second respondent in No.587/BCDFGISSSV/2024 dated 27.05.2024 against petitioner brother Mr.Talla Srinivasalu Reddy, Age 27 years S/o.Pethakotty Reddy and set aside the same and set the detenu at liberty.

For Petitioner : Mr.R.Rafi Babu

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 Memo No.587/BCDFGISSSV/2024 dated 27.05.2024 is sought to be quashed in the present Habeas Corpus Petition.



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2. The learned counsel for the petitioner would submit that the Detaining Authority relied on FIR No.299 dated 13.12.2023, which would indicate that bail was granted by the Court in C.C.No.49 of 2021. However, relying on the said case, the detention order has been passed.

3. Per contra, in the present case, the Detaining Authority relied on extraneous consideration of a false case unconnected to the case of the detenu. Therefore, the opinion formed by the Detaining Authority that there is a likelihood of grant of bail to the detenu is not placed on any materials available on record. Therefore, the order relied upon by the Detaining Authority cannot be said to be similar, subject to the satisfaction vitiated and suffers from non-application of mind.

4. Similar case need not be on similar facts. However, the analogy and the legal principles adopted must be similar, so as to form an opinion that the Detaining Authority has not applied his mind. Therefore, similarity does not mean or relatable to the facts of the case, but relatable to the legal principles and the grounds on which the bail was granted in the similar case.



5. 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 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

¹ [2011 (5) SCC 244]



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and the Habeas Corpus Petition is allowed. The detenu viz., Talla Srinivasalu Reddy, S/o. Pethakotty Reddy, aged 27 years, now confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

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

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Additional Chief Secretary to the Government,
Home Prohibition and Excise Department,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai – 600 007.
- 3.The Superintendent of Prison,
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- 4.The Inspector of Police,
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Chennai.



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5.The Public Prosecutor,
Madras High Court.



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and
N.MALA, J.

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