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HCP.No.1705 of 2024

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.1705 of 2024

Saraswathi

... Petitioner

Vs.

1.State of Tamilnadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

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

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

4.The Inspector of Police,
M-3, Puzhal Police Station,
Chennai.

... Respondents

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 in Memo No.589/BCDFGISSSV/2023, dated 16.11.2023



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passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son KISHORE S/O.RAVI aged about 24 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.C.Johnson Samuel
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 Kishore, aged about 24 years, S/o.Ravi, has come forward with this petition challenging the detention order passed by the second respondent dated 16.11.2023 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 there are two previous cases pending 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 CrI.M.P.No.22719 of 2022, dated 24.11.2022, is not similar to the case on hand, since the accused therein was granted bail after recording the fact that there are two previous cases pending against the accused therein. However, it is admitted that there are four 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



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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'**, had 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



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set aside and the Habeas Corpus Petition is allowed. The detenu viz., Kishore, aged about 24 years, S/o.Ravi, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[M.S.R., J]

[S.M., J]

02.08.2024

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

Tsg

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.



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To

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