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H.C.P.No.1335 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1335 of 2023

Nowshath

... Petitioner

Vs.

1. State of Tamil Nadu Rep. by
The Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George,
Chennai 600 009.
2. The Commissioner of Police,
Coimbatore City,
Coimbatore.
3. The Superintendent of Prison, Detaining Authority,
Central Prison Coimbatore,
Coimbatore.
4. The Inspect of Police,
All Women Police Station (East),
Coimbatore City.

... 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 pertaining to the order of detention passed by the 2nd respondent in C.No.37/G/IS/2023, dated 27.03.2023 against the petitioner's brother Bilal J male aged 25 years of Jalaludeen now confined in Central Prison, Coimbaore and set aside the same and direct the respondents to produce the detenue before this Court and set him at liberty.

For Petitioner	:	Mr.T.Balaji
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor assisted by Mr.C.Aravind

ORDER

(Order of the Court was made by **M.S.RAMESH, J.**)

The petitioner, brother of the detenu, J.Bilal, aged 25 years, S/o Jalaludeen, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 27.03.2023 slapped on his brother, branding him as "Sexual Offender" under the Tamil Nadu Act 14 of 1982.



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2. Heard the learned counsel for the petitioner and the learned

Additional Public Prosecutor appearing for the respondents.

3. Though several points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail by relying upon the bail order granted to the accused in a similar case, suffers from non-application of mind as the bail was granted in similar case on the ground that accused is entitled to statutory bail and not on merits.

4. In paragraph No.8 of the Grounds of Detention, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in the ground case since in a similar case, bail was granted to the detenu therein and relied upon an order passed by the Sessions Judge, Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offences Act, Coimbatore in CMP.No.139/2023. On a perusal of the said order in the Booklet, this Court finds that the said order relates to release of the accused on bail u/s.167[2] of Cr.P.C., since the accused therein had been in prison for more than 60 days and not on merits. Therefore, it is not a



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similar case and the subjective satisfaction of the Detaining Authority, regarding the possibility of the detenu coming out on bail suffers from non-application of mind, which vitiates the detention order.

5. The issue is directly covered by the judgment of the Hon'ble Supreme Court in ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in ***2011 [5] SCC 244***. The relevant observations are as follows:-

"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.



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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."

In view of the ratio laid down by the Hon'ble Supreme Court in the decision cited supra and in view of the aforesaid reason, this Court is of the view that the detention order is liable to be quashed.

6. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 27.03.2023 in C.No.37/G/IS/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu 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]
09.01.2024

pvs
Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No



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To

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State of Tamil Nadu
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Coimbatore.
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