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H.C.P.No.1726 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.1726 of 2024

Pushpa

... Petitioner

Vs.

1.State of Tamil Nadu,

Represented by The Additional Chief Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,

Greater Chennai,
Vepery, Chennai – 600 007.

3.The Inspector of Police,

G-5, Secretariat Colony Police Station,
Chennai.

4.The Superintendent of Prison,

Central Prison – II,
Puzhal, Chennai – 600 006.

... Respondents

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, calling for the



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records relating to the detention order in Memo No.575/BCDFGISSSV/2024 dated 25.05.2024 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Thiru.Ganesan, S/o.Kumar, aged about 26 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Thiru.Ganesan, S/o.Kumar, aged about 26 years the detenue herein at liberty.

For Petitioner : Mr.R.Muthukumar

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.575/BCDFGISSSV/2024 dated 25.05.2024 is sought to be quashed in the present Habeas Corpus Petition.

2. The learned counsel for the petitioner would submit that the Detaining Authority relied on some cases registered by the J-3, Guindy Police Station in Crime No.301 of 2022, wherein, the Court of Principal



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Sessions Judge, Chennai granted bail in Crl.M.P.No.8322 of 2022. However, in the similar case, the accused was having one previous case. Thus, there was no objection on the side of prosecution to grant bail.

3. Per contra, in the present case, the detenu is facing 10 criminal cases. 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 Another***¹, has dealt

¹ [2011 (5) SCC 244]



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 bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the



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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.”

6. Hence, mere subjective satisfaction would be insufficient to invoke preventive detention law. Such subjective satisfaction must have nexus, link and proximity relating to the adverse cases relied on. Perusal of the records in the present case would reveal that the similar case relied on is not actually similar, since in the said case the accused had one previous case, but in the present case, the detainee is having about 10 previous cases. Thus, there is no application of mind and the detention order in the present case, is liable to be quashed.

7. Accordingly, the detention order passed by the 2nd respondent in Memo No.575/BCDFGISSSV/2024 dated 25.05.2024, is hereby set aside



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and the Habeas Corpus Petition is allowed. The detenu viz., Ganesan, S/o. Kumar, aged 26 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.] [V.S.G., J.]
27.08.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Additional Chief Secretary,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
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Vepery, Chennai – 600 007.
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5.The Public Prosecutor,
Madras High Court.



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