



H.C.P.No.1843 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.1843 of 2024

Mrs.Gnanavadivu

... Petitioner

Vs.

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

2.The District Magistrate and District Collector,
Tiruppur District.

3.The Superintendent of Police,
Tiruppur District.

4.The Superintendent,
Central Prison,
Coimbatore Central Prison.

5.The Inspector of Police,
AWPS Police Station
Udumalpet,
Tiruppur.

... 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, calling for the records of the 2nd respondent herein concerned in Cr.M.P.No.56/SEXUAL OFFENDER/2024, quashing the same and directing the respondents herein to produce the body and person of the Detenu by name Jayakalishwaran, son of Gandhiraj @ Periyasamy, aged about 19 years, before this Court and setting him at liberty now detained in Central Prison, Coimbatore, Coimbatore District.

For Petitioner : Mr.B.Nedunzhelian

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 Cr.M.P.No.56/SEXUAL OFFENDER/2024 dated 16.06.2024 is sought to be quashed in the present Habeas Corpus Petition.

2. The learned counsel for the petitioner would submit that the detenu was arrested on 12.05.2024 and the impugned Detention Order has been



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issued on 16.06.2024. Except ground case, there is no adverse case relied on by the Detaining Authority.

3. The learned counsel for the petitioner would further submit that there is a delay of more than one month in passing the detention order. Further, the similar case relied on for forming an opinion by the Detaining Authority is not actually similar. The Detaining Authority has stated that he is aware that detenu has not moved any bail application in any Court of Law so far. Having said so, he has recorded that there is a likelihood of coming out on bail. Therefore, the subjective satisfaction is not based on any concrete material available on record for the purpose of invoking preventive detention law.

4. The learned Additional Public Prosecutor appearing on behalf of the respondents is also unable to contend that there is any other case pending against the detenu in the present case.

5. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that there is an inordinate delay in



passing the order of detention.

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6. In the case of ***Sushanta Kumar Banik vs. State of Tripura***¹, when there was an inordinate delay from the date of proposal till passing of the detention order and likewise, between the date of detention order and the actual arrest, the Hon'ble Supreme Court had held that the live and proximate link, between the grounds and the purpose of detention, stands snapped in arresting the detenu. The relevant observation of the Hon'ble Supreme Court is extracted hereunder:

“20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds

1. 2022 LiveLaw (SC) 813



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of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

7. Further, the similar case relied on is not actually similar. 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.

8. The Hon'ble Supreme Court of India, in the case of ***Rekha vs. State of Tamil Nadu through Secretary to Government and Another***², 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

2. 2011 (5) SCC 244



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 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.”

9. 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 alleged offence seems to be heinous in nature. However, that alone would be insufficient for the purpose of invoking preventive detention law. More so, the offences can be dealt with by the prosecution under the law of the land and in the event of filing any bail application by the detenu, the Police Authorities may oppose the same or in the event of granting bail, file an application for cancellation of bail or to impose stringent conditions enabling the authorities to conduct surveillance in respect of the activities of the detenu. However, the detention order seems to be not in consonance with the principles settled.

10. Accordingly, the detention order passed by the 2nd respondent in Cr.M.P.No.56/SEXUAL OFFENDER/2024 dated 16.06.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz.,



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Jayakalishwaran, S/o. Gandhiraj @ Periyasamy, aged 19 years, now confined at Central Prison, Coimbatore, 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
(4/4)

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
St. George Fort, Secretariat,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Tiruppur District.
- 3.The Superintendent of Police,
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Central Prison,
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6.The Public Prosecutor,
Madras High Court.



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S.M.SUBRAMANIAM, J.
and
V.SIVAGNANAM, J.

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