



HCP.No.1505 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1505 of 2023

Santhi

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary to Government,
Prohibition & Excise Department,
Fort St.George, Chennai – 600 009.

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

3.The Superintendent of Police,
Namakkal District,
Namakkal.

4.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.

5.The Prison Superintendent,
Central Prison,
Salem.

... Respondents



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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 dated 25.06.2023 passed by the 2nd respondent in his proceedings in C.M.P.No.8/Sexual Offender/2023 (M1) as if he is a Sexual Offender and quash the same and direct the respondents herein to produce the petitioner's brother namely Selvam, S/o.Marimuthu, aged about 32 years, who is presently undergoing detention in the Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.C.S.Saravanan

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C. Aravind

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

The petitioner herein, who is the sister of the detenu Selvam, aged about 32 years, S/o.Marimuthu, has come forward with this petition challenging the detention order passed by the second respondent dated 25.06.2023, slapped on her brother, branding him as "Sexual Offender"



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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].

2. Heard the learned counsel for the petitioner, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his arguments on the ground that the Detaining Authority has relied upon the order passed in CrI.O.P.No.2773/2022 dated 04.02.2022 and came to the conclusion that in a similar case bail has been granted and that there is a likelihood of the detenu also to be released on bail. The learned counsel for the petitioner further submitted that the order relied upon by the Detaining Authority is not similar, as the offences in the similar case are different than the detenu's case and therefore, there is a non-application of mind on the part of the Detaining Authority.



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4. On a perusal of the Grounds of Detention, it is seen that in the order that was relied upon by the Detaining Authority in CrI.O.P.No.2773/2022 dated 04.02.2022, the accused therein was enlarged on bail for the offences under Sections 366 and 376 of IPC. However, in the present case, the offences involved are under Sections 302, 376 and 397 of IPC, which are the graver offences. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind, as the offences involved in the similar case is distinctive from the detenu's case. Hence, on the above ground, the Detention Order is liable to be quashed.

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



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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 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



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

7. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 25.06.2023 in C.M.P.No.8/Sexual Offender/2023 (M1), is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Selvam, aged about 32 years, S/o.Marimuthu, 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]

22.02.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No



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To

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Prohibition & Excise Department,
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- 2.The District Magistrate and District Collector,
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Namakkal.
- 3.The Superintendent of Police,
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- 4.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
- 5.The Prison Superintendent,
Central Prison,
Salem.
- 6.The Public Prosecutor,
High Court, Madras.