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HCP.No.1867 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

H.C.P.No.1867 of 2024

Gowri

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep.by the Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section),
Veppery, Chennai 600 007.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
4. The Inspector of Police,
F5, Choolaimedu 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 Vide No.752/BCDFGISSSV/2024 dated 03.07.2024, passed by the second respondent



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and quash the same and direct the respondents herein to produce the petitioner's son namely Bharath, S/o.Babu, aged 23 years, who is presently undergoing detention in the Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.S.N.Arunkumar
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 second respondent in No.752/BCDFGISSSV/2024 dated 03.07.2024, 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 the case registered by the F-5, Choolaimedu Police Station in Crime No.254 of 2024, wherein, this Court granted bail in CrI.O.P.No.14156 of 2024 to one of the accused. However, the accused therein had no 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 having two adverse 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 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

¹ [2011 (5) SCC 244]



relevant paragraphs 10 and 11 are extracted hereunder;

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“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 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



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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 no previous case, but in the present case, the detenu is having about two adverse cases. Thus, there is no application of mind and the detention order in the present case, is liable to be quashed.

4.Thus, the impugned order of detention in No.752/BCDFGISSSV/2024 dated 03.07.2024 is quashed and the Habeas Corpus Petition stands **allowed**. The detenue, namely, Bharath, S/o.Babu, aged 23 years, who is presently undergoing detention in the Central Prison, Puzhal, is directed to be set at liberty forthwith unless he is otherwise required in connection with any other case.

[S.M.S., J.]

[N.S., J.]

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29.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.



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