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H.C.P.No.1549 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1549 of 2023

Ayyammal

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by the Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Coimbatore District.
- 3.The Superintendent of Police,
Coimbatore District.
- 4.The Superintendent of Prison,
Central Prison,
Coimbatore, Coimbatore District.
- 5.The Inspector of Police,
Anaimalai Police Station,



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Coimbatore District.

... Respondents

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Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, calling for the records relating to the Detention Order vide Cr.M.P.No.26/S.O/2023 dated 20.07.2023 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's foster son namely Mubarak, S/o. Abbas, aged 33 years (who is presently undergoing detention in the Central Prison, Coimbatore) before this Hon'ble Court and set him at liberty.

For petitioner : Mr.N.Arunkumar

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

ORDER

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

The petitioner, mother of the detenu Mubarak, aged 33 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 20.07.2023 slapped on her foster son, branding him as "Sexual Offender" as contemplated under Section 2(ggg) of the



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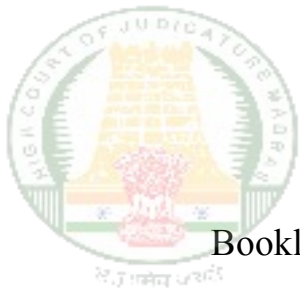
Tamil Nadu Act 14 of 1982.

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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.

4. In paragraph No.5 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 dated 14.07.2022 passed by the Sessions Judge, Special Court for Exclusive trial of cases under the Protection of Children from Sexual Offences Act 2012, Coimbatore, in C.M.P.No.870/2022 . On a perusal of the said order in page No.117 of the



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Booklet, this Court finds that the said order relates to release of the accused on bail u/s.167[2] of Cr.P.C., and not on merits. Therefore, it is not a 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 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***, 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. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail by referring to a bail order granted to an accused in a case in C.M.P.No.870/2022. However, the said bail was granted on the ground that accused is entitled to statutory bail and not on merits and therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from



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non-application of mind. Hence, on the above grounds, the Detention

Order is liable to be quashed.

6. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 20.07.2023 in Cr.M.P. No.26/S.O./2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mubarak, S/o. Abbas, aged 33 years, 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]
18.01.2024

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Index : Yes / No

Neutral Citation : Yes / No



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- 5.The Inspector of Police,
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Coimbatore District.
- 6.The Public Prosecutor,
High Court, Madras.
7. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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