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HCP.No.1575 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM :

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

H.C.P.No.1575 of 2023

Thirunavukkarasu

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
The Greater Chennai City,
Vepery, Chennai – 600 007.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 600 066.

4.The Inspector of Police,
W-22, Mylapore All Women 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



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detention order in Memo No.273/BCDFGISSSV/2023, dated 27.06.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son the detenu Vignesh Kumar @ Vicky, male, aged 24 years, S/o.Thirunavukkarasu, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.P.K.Ilavarasan

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

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

The petitioner herein, who is the father of the detenu Vignesh Kumar @ Vicky, aged 24 years, S/o.Thirunavukkarasu, has come forward with this petition challenging the detention order passed by the second respondent dated 27.06.2023 slapped on his son, branding him as "Sexual Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral



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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 are raised in this petition, the learned counsel for the petitioner focused mainly on the ground that the subjective satisfaction of the Detaining Authority that the relatives of the detenu are taking steps to take out the detenu on bail, suffers from non-application of mind, as the statement under 161 Cr.P.C., said to have been made by the petitioner before the Sponsoring Authority, is not dated. Hence, the learned counsel for the petitioner raised a *bona fide* doubt as to when this statement was obtained from the petitioner. The learned counsel further pointed out that, unless the statement relied upon by the Sponsoring Authority is immediately before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the Detaining Authority based on this undated statement, would vitiate the Detention Order.



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4. It is seen from records that the statement obtained by the Sponsoring Authority from the petitioner, enclosed in the Booklet, stating that he is planning to file bail application to bring out the detenu on bail, is not dated. On a perusal of the Grounds of Detention, it is seen that, in Para No.4, the Detaining Authority has observed that the Sponsoring Authority has stated that he came to understand that the relatives of the detenu are taking steps to take him out on bail by filing bail application before the appropriate Court and has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the statement obtained by the Sponsoring Authority from the relative of the detenu stating that he is planning to file bail application to bring out the detenu on bail is not dated, the veracity of such statement becomes doubtful. The compelling necessity to detain the detenu would also depend on when the statement was obtained. In the absence of the date, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective satisfaction of the Detaining Authority based on such undated material, suffers from non-application of mind.



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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. 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. 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



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Habeas Corpus Petition is allowed. The detenu viz., Vignesh Kumar @ Vicky, aged 24 years, S/o.Thirunavukkarasu, 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]
01.02.2024

Index: Yes/No

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To

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- 2.The Commissioner of Police,
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