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HCP.No.2207 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.2207 of 2024

Guruprasad

... Petitioner

Vs.

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

2.The Commissioner of Police/  
Detaining Authority,  
Coimbatore City,  
Coimbatore District.

3.The Superintendent of Prison  
Central Prison -Coimbatore,  
Coimbatore District.

4.State rep. By its  
The Inspector of police,  
Podanur Police Station,  
Coimbatore District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records relating to the petitioners brother detention under Tamil Nadu Act 14 of 1982 vide detention order dated 05.06.2024 on the file of the 2nd respondent made in proceedings Memo C.No.62/G/IS/2024, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely M.Abi vishnu @ Kuzhanthai, S/o.Marimuthu, aged 25 years before this High Court and set the petitioner's brother at liberty from detention now the petitioners brother detained at Central Prison Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

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 2<sup>nd</sup> respondent in proceedings C.No.62/G/IS/2024 dated 05.06.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The previous cases registered have no proximity with the ground case warranting to invoke Act 14 of 1982. That apart, the Detaining Authority relied on the similar bail order granted by the learned Principle



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District and Sessions Judge, Coimbatore in CMP.No.3931 of 2022 dated 11.08.2022, wherein the respondent police therein filed final report and the same was taken on file. Relying on the same, bail was granted.

3.It is found that in the similarly placed case, the Court granted statutory bail under Section 167(2) Cr.P.C. Such statutory bail cannot be equated in the bail application likely to be filed by the detenue's relatives. The comparison made would reveal that there is no application of mind on the part of the Detaining Authority. 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.

4.In the present case, the similar case was considered and bail was granted under Section 167(2) Cr.P.C, which cannot be equated with the bail application likely to be filed by the relatives of the detenue. Thus, there is no application of mind on the part of the Detaining Authority,



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while passing the impugned order of detention. Preventive detention being draconian, the Detaining Authority must be subjectively satisfied and it cannot be issued on the mere basis that the criminal case has been registered.

5. The Hon'ble Supreme Court of India, in the case of ***Rekha vs. State of Tamil Nadu through Secretary to Government and Another***<sup>1</sup>, 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 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*

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<sup>1</sup> [2011 (5) SCC 244]



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*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 satisfaction would be insufficient to invoke preventive detention law. The subjective satisfaction must have nexus, link and proximity relating to the adverse cases relied on. Perusal of the



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records in the present case would reveal that the similar case relied on is not actually similar. Thus, there is no application of mind and the detention order in the present case, is liable to be quashed.

7. Accordingly, for the aforesaid reason, the detention order passed by the second respondent in proceedings Memo C.No.62/G/IS/2024 dated 05.06.2024 is quashed and the Habeas Corpus Petition is **allowed**. The detenue viz., M.Abi vishnu @ Kuzhanthai, S/o.Marimuthu, aged 25 years who is detained at the Central Prison Coimbatore, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

**30.09.2024**

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

- 1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Fort St.George,  
Chennai – 600 009.
- 2.The Commissioner of Police/  
Detaining Authority,  
Coimbatore City,  
Coimbatore District.
- 3.The Superintendent of Prison  
Central Prison -Coimbatore,  
Coimbatore District.
- 4The Inspector of police,  
Podanur Police Station,  
Coimbatore District.
- 5.The Joint Secretary to Government  
Public (Law and Order),  
Fort ST.George, Chennai – 9.
- 6.The Public Prosecutor,  
Madras High Court.



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AND  
V.SIVAGNANAM, J.

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