



H.C.P.No.1780 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1780 of 2023

Malliga

... Petitioner

Vs.

1. The Secretary to the Government,
Home Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.
2. District Collector and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.
3. The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
4. The Superintendent of Prison,
Central Prison, Vellore.
5. The Superintendent of Police,
Peranamallur Police Station,
Tiruvannamalai District.

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of Detention passed by the second respondent dated 14.08.2023 in D.O.No.79/2023-C2 against the petitioner



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Son Selvaraj, Male aged 28 years S/o. Nadarajan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenue before the Hon'ble Court and set him at Liberty.

For Petitioner : M/s.D.Balaji
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, mother of the detenu Selvaraj, S/o.Nadarajan, aged about 28 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 14.08.2023, slapped on her 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 Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [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 grounds are raised in the petition, the learned counsel for the petitioner mainly focused on the ground that the bail order relied upon by the Detaining Authority is not similar to the case on hand, as the offences against the accused therein in the similar case are one under Sections 376 and 506(i) IPC, whereas, the offences alleged against the detenu in the ground case are under Sections 341, 354(D), 354(A)(1)(ii), 328, 376(3) IPC r/w Sec. 5(1) r/w 6(1), 7 r/w 8 of POCSO Act of 2012. Therefore, the learned counsel submitted that the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail by relying upon the aforesaid case, suffers from non-application of mind.

4. On a perusal of the Booklet, this Court finds that, in the similar case relied upon by the Detaining Authority, i.e., Cr.M.P.No.1382 of 2013, the offences alleged against the accused therein are under Sections 376 and 506(i) IPC, whereas, the offences alleged against the detenu in the ground case, i.e., Crime No.225 of 2023, are under Sections 341, 354(D),



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354(A)(1)(ii), 328, 376(3) IPC r/w Sec. 5(1) r/w 6(1), 7 r/w 8 of POCSO Act of 2012. However, this material aspect has not been considered by the Detaining Authority while relying upon the bail order in the said case to form an opinion that the detenu is likely to be released on bail. Therefore, this Court is of the view that the subjective satisfaction of the Detaining Authority that the detenue is likely to be released on bail, is irrational and suffers from non-application of mind.

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 paragraphs No.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 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.”



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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. Accordingly, the detention order passed by the 2nd respondent in D.O.No.79/2023-C2, dated 14.08.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Selvaraj, S/o.Nadarajan, aged about 28 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]
02.01.2024

pvs

Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No



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To

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1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
2. The District Collector & District Magistrate,
Krishnagiri District,
Krishnagiri.
3. The Superintendent of Police,
Krishnagiri District,
Krishnagiri.
4. The Superintendent of Prison,
Central Prison,
Salem.
5. The Inspector of Police,
Hudco Police Station,
Krishnagiri District.
6. The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J.

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