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HCP.No.2364 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.2364 of 2024

Albert

... Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
O/o.Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai District.

4.The Inspector of Police,
G-2, Periyamedu Police Station,
Chennai District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order in BCDFGISSSV No.736/2024 dated 27.06.2024 on the file of the Respondent No.2 and Quash the same and direct the Respondents to produce the body and person of petitioner son one named Mr.Richesh S/o.Albert aged about 24 years now confined at Central Prison, Puzhal, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizh Selvakumar

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 2nd respondent in proceedings BCDFGISSSV No.736/2024 dated 27.06.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The Detaining Authority relied on the ground that the detainee Richesh was arrested and remanded in G-2 Periyamedu Police Station in Crime No.119 of 2024. He has not filed any bail petition sofar in the said case. However, the Sponsoring Authority has stated that the detainee's



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relatives are taking steps to take him out on bail in the criminal cases by filing bail application. In a similar case, registered by G-1 Vepery Police Station in Crime No.16 of 2021 under Sections 341, 294 (b), 323, 336, 392 and 506(ii) IPC bail was granted to some other accused by the Court of Principal Sessions Judge, Chennai in CrI.M.P.No.2227 of 2024. Thus, the Detaining Authority drew an inference that there is a possibility of coming out on bail in the above said cases, since it is similarly placed cases.

3.Three cases are relied on for the purpose of detaining the detainee. First two adverse cases were registered in the year 2018 by G-2 Periamed Police Station in Cr.No.238 of 2018 and Cr.No.388 of 2018. Both the adverse cases relied have no proximity with the ground case. Third relied on case was registered in Cr.No.67 of 2024 under Section 294 (b), 341, 323, 324, 506 (ii) I.P.C. The nature of the adverse cases relied on would be insufficient to form an opinion that there is likelihood of causing breach of public order. All the cases relied on of the ground case can be dealt with by the Police authority under the law of land. In case of grant of bail by the jurisdictional court, the Police authority may oppose the bail or if bail



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granted, file petition to cancel the bail. In alternate, they can seek some stringent conditions to be imposed on at the time of considering the bail application. Contrarily, preventing a person under preventive detention law subjective satisfaction of the authority that there is likelihood of causing breach of order is essential which is not visible in the present case that being. So we are inclined to consider this petition.

5. The Hon'ble Supreme Court of India, in the case of ***Rekha vs. State of Tamil Nadu through Secretary to Government and Another¹***, 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*

¹ [2011 (5) SCC 244]



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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. 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 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, the detention order passed by the second respondent in BCDFGISSSV No.736/2024 dated 27.06.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mr.Richesh S/o.Albert aged about 24 years now confined at Central Prison, Puzhal, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

[S.M.S., J.]

[V.S.G., J.]

21.10.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

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To

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- 2.The Commissioner of Police,
O/o.Commissioner of Police,
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- 3.The Superintendent of Prison,
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- 4.The Inspector of Police,
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- 5.The Public Prosecutor,
Madras High Court.

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