



HCP.No.2282 of 2024

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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.2282 of 2024

Premnath

... Petitioner

Vs.

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat
Chennai – 600 009.
- 2.The District Collector and District Magistrate of,
Ranipet District, Ranipet – 1,
Erode.
- 3.The Superintendent of Police,
Ranipet District, Ranipet
- 4.The Superintendent of Prison,
Central Prison, Vellore.
- 5.The Inspector of Police,
Sipcot Police Station,
Ranipet 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 records in connection with the order of Detention passed by the second respondent in B3/D.O.No.65/2024 dated 15.08.2024 against the petitioner son Santhakumar, Male aged 25 years S/o.Premnath, 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 : Mr.D.Balaji

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 B3/D.O.No.65/2024 dated 15.08.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The learned counsel for the petitioner submitted that there is an inordinate delay in passing the order of detention. He would further submit that the similar bail order relied on by the detaining authority is dissimilar. In the similar bail order, the bail was granted relying on the order of the Supreme Court in Suo-Motu petition (Civil) No.1 of 2020 *In*



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Re: contagion of Covid -19 Virus in prisons. Therefore, bail was granted on exceptional circumstances which cannot be taken into consideration for the purpose of detaining the detainee in the present case.

3.The Detaining Authority relied on the ground that the detainee Mr.Santhakumar was arrested and remanded in Sipcot Police Station in Crime No.264 of 2024. He has filed bail petition in the said case and the same was dismissed on 06.08.2024 in CrI.M.P.No.301 of 2024. However, the Sponsoring Authority has stated that the detainee's relatives are taking steps to take him out on bail in the criminal cases by filing another bail application. In a similar case, registered by Siva Kanchi Police Station in Crime No.2162 of 2020 under Sections 294 (b), 307, 392, 506(ii) I.P.C bail was granted to some other accused by the Sessions Court-II, Kancheepuram, in CrI.M.P.No.1191 of 2020. 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.

4.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



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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.

5.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, 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.



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6. 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 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

¹ [2011 (5) SCC 244]



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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.”

7. 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.



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8. Accordingly, the detention order passed by the second respondent in B3/D.O.No.65/2024 dated 15.08.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Santhakumar, Male aged 25 years S/o.Premnath, who is confined at Central Prison, Vellore, 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.]

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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AND
V.SIVAGNANAM, J.

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- 6.The Public Prosecutor,
Madras High Court.

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