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HCP.No.2457 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM :

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

H.C.P.No.2457 of 2024

Usha

... Petitioner

Vs.

State of Tamil Nadu,

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

2.The Commissioner of Police,
Greater Chennai,
Vepery Chennai District,
Chennai.

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

4.The Inspector of Police,
C-1, Flower Bazaar Police Station,
Chennai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, to call for the records pertaining to the
order of detention passed by the 2nd respondent in



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872/BCDFGISSSV/2024 dated 22.08.2024 against the petitioner's son Vicky S/o.Viji male aged 22 years now confined in Central Prison, Puzhal, chennai and set aside the same and direct the respondents to produce the detune before this Court and set him at Liberty at Liberty

For Petitioner : Mr.T.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 872/BCDFGISSSV/2024 dated 22.08.2024 is sought to be quashed in the present Habeas Corpus Petition.

2. Learned counsel for the petitioner would submit that the similar bail order relied by the detaining authority is dissimilar since the similar bail order granted by the Principal Special Court for Essential Commodities and Narcotic Drugs and Psychotropic Substances Act, Chennai was under Section 167(2) of Cr.P.C. However, the said order is not applicable with reference to the facts of the detunue's case. Thus, the detention order lacks application of mind by the detaining authority.



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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, 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



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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 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

¹ [2011 (5) SCC 244]



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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 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



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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 872/BCDFGISSSV/2024 dated 22.08.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Vicky S/o.Viji male aged 22 years now confined in Central Prison, Puzhal, chennai, 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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S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery Chennai District,
Chennai.
- 3.The Superintendent of Prison,
Central Prison Chennai,
Chennai District.
- 4.The Inspector of Police,
C-1, Flower Bazaar Police Station,
Chennai 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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