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H.C.P.No.1960 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1960 of 2023

A.Reshma
W/o.Abbas

... Petitioner

Vs.

- 1.The Secretary to the Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Mayiladuthurai District,
Mayiladuthurai.
- 3.The Superintendent of Police,
O/o. Superintendent of Police,
Mayiladuthurai District.
- 4.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.
- 5.The Inspector of Police,
Mayiladuthurai All Women Police Station,
Mayiladuthurai District.

... Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention C.O.C.No.43/2023, dated 06.09.2023 on the file of the Respondent No.2 and quash the same and direct the respondents to produce the body and person of petitioner's husband one named Mr.Abbas S/o.Kalipulla, aged about 30 years now confined at Central Prison, Trichy before this Court and set him at liberty forthwith.

For Petitioner	:	Mr.P.Muthamizh Selvakumar
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, wife of the detenu Abbas, aged about 30 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 06.09.2023 slapped on her husband, 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



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Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. The detention order is liable to be quashed on the sole ground that the subjective satisfaction arrived at by the Detaining Authority regarding the imminent possibility of the detenu coming on bail, suffers from non-application of mind.

4. The Detaining Authority had relied upon an order passed in CrI.M.P.No.373 of 2020 by the learned Sessions Judge, (Special Court under POCSO Act), Nagapattinam, to infer that bail is likely to be granted to the detenu. However, on perusal of the order passed in CrI.M.P.No.373 of 2020, this Court finds that the bail was granted to the accused therein, since the learned Public Prosecutor did not object to grant of bail. Therefore, the said order relied upon by the Detaining Authority to infer that in similar cases bail has been granted, suffers from non application of mind, since the accused therein was not on a similar footing as that of the detenu. This issue



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is also covered by the Hon'ble Supreme Court in ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in 2011 [5]

SCC 244. The relevant observations are as follows:-

"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



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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."

5. 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.

6. Accordingly, the detention order passed by the 2nd respondent dated 06.09.2023 in C.O.C.No.43/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu 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]
23.01.2024

pvs

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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