



WEB COPY



H.C.P.No.1982 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1982 of 2023

Gomathi

... Petitioner

Vs.

1. Government of Tamil Nadu, rep.by its
The Secretary
Home, Prohibition and
Excise Department
Secretariat, Chennai 600 009.
2. The District Collector
District Collector Office
Tiruvallur District.
3. The Superintendent of Police
District Superintendent of Police
Thiruvallur District.
4. The Superintendent of Prison
Central Prison-II
Puzhal, Chennai.



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5.The Inspector of Police
PEW Gummidipoondi
Tiruvallur 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 Detention Order passed in Memo BCDFGISSSV No.25/2023 dated 04.09.2023 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of petitioner's Husband Thiru.Davidraja M/A 27 years, S/o.Dhanasekar now confined in Central Prison-II, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner	:	Mr.D.Padmanabhan
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor assisted by Mr.C.Aravind

ORDER

(Order of the Court was made by SUNDER MOHAN, J.)

The petitioner, wife of the detenu Davidraja, aged about 27 years, S/o.Dhanasekar, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 04.09.2023 slapped on



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her husband, branding him as "Drug 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].

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

3.The learned counsel for the petitioner though canvassed several points before this Court, focused mainly on the point that there is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction. Learned counsel pointed out that the Detaining Authority has not relied upon any similar case to arrive at the subjective satisfaction and has merely stated *"I am therefore satisfied that an order of detention should be passed against the said accused Davidraja under the Tamil Nadu Act 14 of 1982, with a view to prevent him from indulging in such activities in future which are prejudicial to maintenance of Public*



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Order and Public Health.” This statement of the Detaining Authority without any material, is mere *ipse dixit* and suffers from non application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

4.From a perusal of the Grounds of Detention, it is seen that the subjective satisfaction arrived by the Detaining Authority, is not based on any materials and there is no reference to any similar cases to arrive at such subjective satisfaction. Further, the imminent possibility of the detenu coming out on bail in the ground case has not been specifically stated by the Detaining Authority. This subjective satisfaction of the Detaining Authority is mere *ipse dixit* and suffers from non-application of mind.

5. The issue is directly covered by the judgment of 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 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."

In view of the ratio laid down by the Hon'ble Supreme Court in the decision cited supra and in view of the aforesaid reason, 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 in BCDFGISSSV No.25/2023, dated 04.09.2023, is hereby set aside and the



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Habeas Corpus Petition is allowed. The detenu viz., Davidraja, aged about 27 years, S/o.Dhanasekar, 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]
05.01.2024

pvs

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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