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H.C.P.No.1985 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1985 of 2023

Gayathri

...Petitioner/Wife of the Detenu

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
- 2.District Collector and District Magistrate,
Vellore District, Vellore-9.
- 3.The Superintendent of Police,
Vellore District, Vellore-9.
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Inspector of Police,
Anaicut Police Station,
Vellore 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, to call for the records in connection with the order of Detention passed by the second respondent dated 21.09.2023 in C3/D.O.No.97/2023 against the petitioner's husband Balaganesh, Male, aged 27 years, S/o. Subramani, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr. D.Balaji

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 Balaganesh, S/o.Subramani, aged about 27 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 21.09.2023 slapped on her husband, branding him as "Goonda" 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].



H.C.P.No.1985 of 2023

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.14900/2023 on 04.07.2023 by the learned Sessions Judge, Chennai, to infer that bail is likely to be granted to the detenu. However, on a perusal of the order passed in CrI.M.P.No.14900 of 2023, this Court finds that bail was granted to the accused since the co-accused in that case was also granted bail. Whereas the facts involved in the ground case are not similar to that case. 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 is also covered by the Hon'ble



H.C.P.No.1985 of 2023

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



WEB COPY



H.C.P.No.1985 of 2023

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 21.09.2023 in C3/D.O.No.97/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Balaganesh, aged 27 years S/o.Subramani, 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]
29.01.2024

bga

Index : Yes / No

Neutral Citation : Yes / No



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WEB COPY

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7. The Joint Secretary,
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WEB COPY



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and
SUNDER MOHAN, J.

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