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H.C.P.No.2019 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2019 of 2023

Vijaya Baskar

... Petitioner

Vs.

1. The Additional Chief Secretary to
Government, Home, Probation &
Excise Dept., Chennai - 600 009.
2. The Commissioner of Police,
The Greater Chennai Police,
Vepery, Chennai 600 007.
3. The Inspector of Police,
Team-24, Land Fraud Investigation Wing-II,
Central Crime Branch, The Greater Chennai Police,
Vepery, Chennai.
4. The Superintendent,
Central Prison, Puzhal,
Chennai 600 066.

... Respondents

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 order of the 2nd respondent herein, in the detention order No.391/BCDFGISSSV/2023, dated



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08.09.2023 and quash the same and direct the respondents to produce the body and person of the detenu by name Baskar aged about 56 years S/o Natarajan detained in Central Prison, Puzhal, Chennai before this Court and set the detenu liberty forthwith.

For Petitioner : Mr.A.Ashwinkumar
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, Baskar, aged 56 years, S/o.Natarajan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 08.09.2023 slapped on her husband, branding him as "Goonda" under the 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.Though several grounds are raised in this petition, the learned counsel for the petitioner focussed mainly on the ground that the subjective



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satisfaction arrived at by the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. In the Grounds of Detention, the Detaining Authority has simply observed that “*the Sponsoring Authority has stated that it is learnt that the relatives of Thiru.Baskar are taking action to take him out on bail in Central Crime Branch-I Cr.No.209/2023 by filing bail application before the appropriate Court.*” However, the statement of the relatives of the detenu that they are planning to file bail application to bring out the detenu on bail, is not dated. Hence, the learned counsel for the petitioner raised a *bona fide* doubt as to when these statements were obtained from the relatives of the detenu and as to the subjective satisfaction of the Detaining Authority based on these undated documents and the same vitiates the Detention order.

4. It is seen from the records that the detaining authority has stated that the Sponsoring Authority has filed a report to the effect that the relatives of the detenu are taking action to take the detenu on bail. However, we find that the statement recorded from the relatives of the detenu are not dated. Unless the detaining authority aware of the date on which the relatives had



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made such a statement, the subjective satisfaction that the detenu is likely to file a bail application stands vitiated. Hence, the satisfaction recorded by the detaining authority that the detenu is likely to file an application and come out on bail 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.



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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 No.391/BCDFGISSSV/2023, dated 08.09.2023, 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]
09.01.2024**

pvs

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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To

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