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H.C.P.No.2533 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

H.C.P.No.2533 of 2024

M.Rajeshwari

... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by its Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison,
Puzhal,
Chennai – 66.

4.The Inspector of Police,
M6, Manali Police Station,
Chennai District.

... Respondents

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, to call for the



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entire records pertaining to the detention order passed by the 2nd respondent in BCDFGISSSV/No.113/2024 Dated 02.08.2024 and set aside the same and direct the respondents to produce the petitioner's son namely Shakthivel, Son of Mani, aged about 28 years, who is now confined in Central Prison, Chennai, before this Hon'ble Court and set him at Liberty.

For Petitioner : Mr.B.Sharmila

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 No. BCDFGISSSV/No.113/2024 dated 02.08.2024 is sought to be quashed in the present Habeas Corpus Petition.

2.The impugned detention order has been passed by the detaining authority on the presumption that the detenue is very likely of coming out of bail in M-6 Manali Police Station in Crime No.294 of 2024, since in similarly placed cases bails are granted by the Courts after a lapse of time. An inference drawn by the detaining authority regarding grant of bail would



result in non application of mind. Bail is to be granted by the Courts based on certain facts and circumstances of the case concerned. However, the detaining authority cannot form an opinion presemptively that there is likelihood of coming out of bail and there is likelihood of grant of bail by the Court concerned.

3.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

¹ [2011 (5) SCC 244]



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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.”

4. 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



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present case would reveal that similarly placed cases bails are granted by the Courts after a lapse of time. Thus, there is no application of mind and the detention order in the present case, is liable to be quashed.

5. Accordingly, the detention order passed by the second respondent in proceedings BCDFGISSSV/No.113/2024 dated 02.08.2024, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Thiru Sakthivel, Aged 28 Years S/o.Mani, who is 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.

6.Resultantly, this Habeas Corpus Petition is allowed.

[S.M.S., J.] [V.S.G., J.]
21.10.2024

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Index : Yes

Neutral Citation : Yes

Speaking order / Non-speaking order



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To

- 1.State of Tamil Nadu,
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