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H.C.P.No.2072 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2072 of 2023

D.Mahalakshmi

...Petitioner/Wife of the Detenu

Vs.

1.State of Tamil Nadu

Represented by its secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector,
Chengalpet District.

3.The Superintendent of Police,
Chengalpet District.

4.The Superintendent of Prison,
Central Prison, Puzhal.

5.The Inspector of Police,
PEW Madurantakam,
Chengalpet 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 entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 21.09.2023 on the file of 2nd respondent herein which was made in CPT. No. 57/2023 and quash the same as illegal and consequently direct the Respondents herein to produce the petitioner's husband at liberty from detention, wherein the petitioner's husband was detained in Central Prison, Puzhal.

For Petitioner : Mr.M.Mohamed Riyaz
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 herein, 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 Act 14 of 1982.



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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 the petition, the learned counsel for the petitioner confines his submission to one ground which according to him would vitiate the detention order. The learned counsel submitted that the Detaining Authority in order to arrive at the subjective satisfaction that the detenu is likely to be released on bail, has relied upon an order passed in CrI.M.P.No.579 of 2021 passed by the learned Principal District and Sessions Judge, Chengalpattu, in the Grounds of Detention. However, the said order was not furnished to the detenu, instead, another order in CrI.M.P.No.1224 of 2023 which is not relevant has been furnished to the detenu and this would therefore vitiate the detention order.

4. On a perusal of the Grounds of Detention and the Booklet furnished by the detenu, this Court finds that there is force in the submission made by the learned counsel for the petitioner. The Detaining Authority has referred to an order passed in CrI.M.P.No.579 of 2021, to infer that the detenu is likely to be released on bail. However, the said order has not been



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furnished. The non furnishing of the relevant document relied upon by the Detaining Authority would affect the petitioner's right to make effective representation. In the absence of the said order, the Detaining Authority's satisfaction that the detenu was on the same footing as that of the accused in Cr.M.P.No.579 of 2021, and therefore likely to be relased on bail is his mere *ipse dixit* and hence, the detention order is vitiated.

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."

6. That apart, the Detaining Authority has furnished an extraneous material in the Booklet which is also likely to confuse the detenu and affect his right to make effective representation. 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.

7. Accordingly, the detention order passed by the 2nd respondent dated 21.09.2023 in CP No.57/2023 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.



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Index : Yes / No

Neutral Citation : Yes / No



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[M.S.R., J] [S.M., J]
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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

ars

To

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector,
Chengalpet District.
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