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H.C.P.No.2221 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2221 of 2023

Thangam

...Petitioner/Daughter of the Detenue

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Ariyalur District, Ariyalur.
- 3.The Superintendent of Police,
Ariyalur District, Ariyalur.
- 4.The Superintendent,
Special Prison for Women,
Tiruchirappalli.
- 5.The State rep. by
The Inspector of Police,
T.Palur Police Station,
Ariyalur. ...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 CrI.M.P.No.15/2023 dated 18.09.2023 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce petitioner's mother Saraswathi, aged about 49, W/o.Chinnayan, who now detained in Special Prison for Women at Tiruchirapalli before this Court and set her at liberty.

For Petitioner : Mr.M.Selvam

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, daughter of the detenue Saraswathi, W/o.Chinnaiyan, aged about 49 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 06.09.2023 slapped on her mother, branding him as "Bootlegger" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand



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Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982

WEB COURT [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 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 detinue coming on bail, suffers from non-application of mind.

4. The Detaining Authority had relied upon an order passed in CrI.M.P.No.4569 of 2022 by the learned Principal Sessions Judge, Ariyalur, to infer that bail is likely to be granted to the detinue. However, on perusal of the order passed in CrI.M.P.No.4569 of 2022, this Court finds that as the investigation in that case has substantially completed and further that the accused therein was taking treatment at hospital due to his ill health, the bail was granted to him, whereas, in the instant case, the detinue has four



previous cases. 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 detainee. This issue is also covered by 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."

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 18.09.2023 in Cr.M.P.No.15/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detainee viz., Saraswathi, aged 49 years W/o.Chinnayan, is directed to be set at liberty forthwith unless he is required in connection with any other case.



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[M.S.R., J] [S.M., J]
22.01.2024

ars

Index : Yes / No

Neutral Citation : Yes / No



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and
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To

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