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H.C.P.No.2194 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2194 of 2023

Padma

...Petitioner/mother of the Detenu

Vs.

1. State of Tamil Nadu

Represented by the Additional Chief Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.

2. The Commissioner of Police,

Greater Chennai,
Vepery, Chennai.

3. The Inspector of Police,

P-6, Kodungaiyur Police Station,
Chennai.

4. The Superintendent of Police,

Central Prison-II, 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

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records relating to the detention order in Memo No.440/BCDFGISSSV/2023 dated 04.10.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Siva @ Venkatesan, S/o. Babu, aged about 27 years, the detenu, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. Muthu Kumar

For Respondents : Mr.E. Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

The petitioner, mother of the detenu Siva @ Venkatesan, aged about 27 years, S/o. Babu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 04.10.2023 slapped on her son, branding him as "Goonda" as contemplated under Section 2(f) of 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.



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3. Though several grounds are raised in the petition, the learned counsel for the petitioner contended that the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the ground case, has not been furnished to the detenu. It is submitted by the learned counsel for the petitioner that the detenu had been deprived of his valuable right of making an effective representation as against the impugned order of detention in the absence of the said bail order relied on by the detaining authority. .

4. On a perusal of the Grounds of Detention, in particular, paragraph No.4, it is seen that the Detaining Authority had relied upon the order of bail in similar case in Cr.M.P.No.18524/2023 passed by the learned Principal Sessions Judge, Chennai. However, the said bail order has not been furnished to the detenu. This non furnishing of the said bail order, relied on by the detaining authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the ground case, would deprive the detenu of making effective representation to the authorities against the order of detention.



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5. The Hon'ble Supreme Court, in the case of ***Rekha Vs. State of Tamil Nadu through Secretary to Government and Another*** reported in ***2011 [5] SCC 244***, has considered a case where it is stated that in the grounds of detention that relatives of detenu are taking action to take him on bail in the criminal case in which the detenu was in remand and that in similar case, bail was granted by Courts. Since no details had been given about the alleged similar cases in which bail was allegedly granted by the Court concerned, it is held by Hon'ble Supreme Court that in the absence of details, the statement which is mere *ipse dixit*, cannot be relied upon and that itself is sufficient to 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. It is relevant to extract paragraphs No.10 and 11 of the said judgment of the Hon'ble Supreme Court:-

"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. 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



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is liable to be quashed.

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7. Accordingly, the detention order passed by the 2nd respondent dated 04.10.2023 in No.440/BCDFGISSSV/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Siva @ Venkatesam, aged about 27 years, S/o. Babu, 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]
06.03.2024

bga

Index : Yes / No

Neutral Citation : Yes / No



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4. The Superintendent of Police,
Central Prison-II, Puzhal, Chennai 600 066
5. The Public Prosecutor,
High Court, Madras.
6. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.



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