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H.C.P.No.2263 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 31.01.2024**

CORAM :

**THE HONOURABLE MR. JUSTICE M.S.RAMESH**

**AND**

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

**H.C.P.No.2263 of 2023**

Vimala

...Petitioner/Sister of the Detenu

Vs.

The State represented by its

1. The Secretary to Government (Home),  
Prohibition and Excise Department,  
Government of Tamil Nadu,  
Fort St. George, Chennai 600 009.
2. The District Collector and District Magistrate,  
Office of the District Collector and District Magistrate,  
Mayiladuthurai District.
3. The Superintendent of Police,  
O/o. Superintendent of Police,  
Mayiladuthurai District.
4. The Superintendent of Police,  
Central Prison, Thiruchirapalli  
Thiruchirapalli.
5. The inspector of Police,  
PEW-Mayiladuthurai Police Station,  
Mayiladuthurai District.

...Respondents



H.C.P.No.2263 of 2023

**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 pertaining to the order of detention dated 24.09.2023 passed by the 2nd respondent bearing No.C.O.C. No.44/2023 and quash the same and produce the detenu Rajesh, aged about 42 years, S/o. Ramamoorthy before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. R. Thirumoorthy

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, sister of the detenu Rajesh, Son of Ramamoorthy, aged about 42 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 24.09.2023 slapped on her brother, 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 Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [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. 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 detenu coming on bail, suffers from non-application of mind.

4. The Detaining Authority had relied upon the orders passed in Crl. M.P. No.997/2022 dated 25.04.2022 and in Crl.M.P. No.4000/2022 dated 29.11.2022 by the learned Principal District and Sessions Judge, Nagapattinam, to come to the conclusion that the detenu is likely to be released on bail as in similar cases, mentioned above, the accused were released on bail. However, in one of the similar cases (Crl. M.P.No.997/2022) relied upon by the detaining authority, it is stated that the accused therein had no bad antecedent. However in the instant case, the detenu has one previous case. 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. 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.*



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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."*

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 2<sup>nd</sup> respondent dated 24.09.2023 in C.O.C.No.44/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Rajesh, aged 42 years S/o.Ramamoorthy, 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]  
31.01.2024

bga

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Neutral Citation : Yes / No

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6. The Public Prosecutor,  
High Court, Madras.
7. The Joint Secretary,  
Law and Order Department,  
Secretariat, Chennai.



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

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