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H.C.P.No.2280 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2280 of 2023

Manimegalai

...Petitioner/Wife of the Detenu

Vs.

1.State of Tamil Nadu

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

2.The Commissioner of Police,

Greater Chennai Police Commissioner,
The Commissioner Office, Vepery, Chennai 7

3. The Superintendent of Police,

Central Prison, Puzhal, Chennai 66

4. The Inspector of Police,

P6 Kodungaiyur Police Station, Chennai.

...Respondents.

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



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records relating to the detention order in Memo No.504/BCDFGISSSV/2023, dated 26.10.2023 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Ashok Kumar @ Ashok, aged 41 years, S/o. Sendoorapandian the detenu, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K. Sathish 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, wife of the detenu Ashok Kumar @ Ashok, aged 41 years, S/o. Sendoorapandian, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 26.10.2023 slapped on her husband, branding him as "Drug Offender" as contemplated under Section 2(e) 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 points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail by relying upon the bail order granted to the accused in a similar case, suffers from non-application of mind.

4. In paragraph No.4 of the Grounds of Detention, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in the ground case since in a similar case, bail was granted to the detenu therein and relied upon an order passed by the Principal Special Court under Essential Commodities & Narcotic Drugs and Psychotropic Substances Act, Chennai in CrI.M.P. No.1817/2022. On a perusal of the said order, this Court finds that the said order relates to release of the accused on bail u/s.167[2] of Cr.P.C., since the respondent therein did not file final report, and not on merits. Therefore, it is not a similar case and the subjective satisfaction of the Detaining Authority, regarding the possibility of the detenu coming out on bail suffers from non-application of mind, which



vitiates the detention order.

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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 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. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail by referring to a bail order granted to the accused in a similar case in CrI.M.P. No.1817 of 2022. However, the said bail was granted u/s. 167[2] of Cr.P.C, by observing that the petitioners therein are entitled to default bail as the respondent therein did not file final report, and not on merits. Therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. Hence, on the above grounds, the Detention Order is liable to be quashed.



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6. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 26.10.2023 in No.504/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Ashok Kumar @ Ashok, S/o. Sendoorapandian, aged 41 years, 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]
28.02.2024

bga

Index : Yes / No

Neutral Citation : Yes / No

To

- 1.The Secretary to the Government
Home, Prohibition and Excise Department,
Fort. St.George, Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai Police Commissioner,
The Commissioner Office, Vepery, Chennai 7
3. The Superintendent of Police,
Central Prison, Puzhal, Chennai 66
4. The Inspector of Police,
P6 Kodungaiyur Police Station, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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6. The Joint Secretary,
Law and Order Department, Secretariat, Chennai.

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