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HCP.No.2356 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2356 of 2023

Lilly Kirtheka

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.

4.The Inspector of Police, (L & O),
T-4, Maduravoyal Police Station,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent dated 01.11.2023 in Memo No.523/BCDFGISSSV/2023 against the petitioner's husband namely Nithyanandam @ Nithya, aged about 42 years, S/o. Mohan, who is confined



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at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 herein, who is the wife of the detenu namely Nithyanandam @ Nithya, aged about 42 years, S/o. Mohan, has come forward with this petition challenging the detention order passed by the second respondent dated 01.11.2023 slapped on her husband, branding him as "Goonda" 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].

2. Heard the learned counsel for the petitioner, as well as 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 mainly focused on the ground that the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind, as the order relied upon by the Detaining Authority is not similar to the case on hand. Referring to the similar order relied upon by the Detaining Authority, learned counsel for the petitioner pointed out that bail was granted to the accused therein on the ground that the investigation was pending and a charge-sheet was also not filed.

4. On a perusal of the Booklet, this Court finds that, in the similar case relied upon by the Detaining Authority i.e., in CrI.M.P.No.18439 of 2018, dated 01.11.2018, bail was granted to the accused therein on the ground that the investigation was pending and a charge-sheet was also not filed. However, it is not so in the case on hand. Therefore, the subjective satisfaction arrived at by the Detaining Authority on the basis of the said order that the detenu is likely to be released on bail, suffers from non-application of mind.



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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**', had 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. 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 paragraph Nos.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



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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.”

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 is liable to be quashed.

7. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 01.11.2023 in No.523/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Nithyanandam @ Nithya, aged about 42 years, S/o. Mohan, 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]

04.03.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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

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To

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- 3.The Superintendent of Prison,
Central Prison,
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- 4.The Inspector of Police, (L & O),
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- 5.The Public Prosecutor,
High Court, Madras.

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