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H.C.P.No.2415 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2415 of 2023

S.Bharathi

... Petitioner

Vs.

1.The Secretary to Government
Home, Prohibition & Excise Department
Secretariat
Fort St. George
Chennai 600 009

2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai 600 007

3.The Superintendent of Police
Central Prison
Puzhal, Chennai 600 066

4.The Inspector of Police,
H3, Tondiarpet Police Station
Chennai

... Respondents



H.C.P.No.2415 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Habeas Corpus, call for records pertaining to the order of detention passed by the second respondent in his proceedings in No.530/BCDFGISSSV/2023, dated 02.11.2023 and quash the same as illegal and produce the detenu, namely Siva @ Sivaji, S/o.Mohan, aged 29 years, now he is confined in Central Prison, Puzhal-II, Chennai before this Court and set him at liberty.

For petitioner : Mr.C.Raja

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

ORDER

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

The petitioner herein, who is the wife of the detenu namely Siva @ Sivaji, aged about 29 years, S/o.Mohan, has come forward with this petition challenging the detention order passed by the second respondent dated 02.11.2023 slapped on her husband, branding him as "Goonda" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law



H.C.P.No.2415 of 2023

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.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner pointed out that the Detaining Authority has not applied its mind while expressing its subjective satisfaction that the detenu is also likely to be released on bail. It is his submission that the case relied upon by the Detaining Authority is not similar to the present case, as the bail was granted in favour of the accused therein by recording the fact that there was one previous case as against the accused therein.

4. On a perusal of the Booklet, this Court finds that the bail order relied upon by the Detaining Authority in Crl.M.P.No.19198 of 2021 is not similar to the case on hand, since the accused therein was granted bail after



H.C.P.No.2415 of 2023

recording the fact that one previous case was reported against the accused therein. However, it is admitted that there are three adverse cases as against the detenu herein. Considering the nature of the bail order in the similar case relied upon by the Detaining Authority and the case on hand, this Court finds that the subjective satisfaction of the Detaining Authority that the detenu is also likely to be released on bail, suffers from non-application of mind.

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. 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:-



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H.C.P.No.2415 of 2023

“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.



H.C.P.No.2415 of 2023

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. Accordingly, the detention order passed by the second respondent in No.530/BCDFGISSSV/2023 dated 02.11.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Siva @ Sivaji, aged about 29 years, S/o.Mohan, is directed to be set at liberty forthwith, unless his confinement is required in connection with any other case.

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

15.04.2024

Index: Yes/No

Neutral Citation: Yes/No



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5.The Public Prosecutor
High Court, Madras

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



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