



HCP.No.2483 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.2483 of 2023

Selvi

... Petitioner

Vs.

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

2.The District Magistrate and District Collector,
Tiruppur District, Tiruppur.

3.The Superintendent of Police,
Tiruppur District.

4.The Superintendent,
Central Prison, Coimbatore.

5.The Inspector of Police,
Palladam Police Station,
Tiruppur District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 2nd respondent pertaining to the order made in Cr.M.P.No.47/GOONDA/2023, dated 27.10.2023 in detain the detenu under 2(f) of the Tamil Nadu Act 14 of 1982, as a GOONDA and quash the same and direct the respondents to produce the detenu Selvam @ Venkatesh, aged 29 years, S/o.Ayyappan, who is detained at Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan

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 mother of the detenu Selvam @ Venkatesh, aged 29 years, S/o.Ayyappan, has come forward with this petition challenging the detention order passed by the second respondent dated 27.10.2023 slapped on her son, branding him as "Goonda" under the



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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.

3. The detention order is liable to be quashed on the sole ground that the subjective satisfaction arrived at by the Detaining Authority regarding imminent possibility of the detenu coming on bail, suffers from non-application of mind.

4. In paragraph 5 of the Grounds of Detention, the Detaining Authority has stated that he was aware of the fact that the detenu has not filed any bail application. He has expressed his satisfaction that there was a real possibility of the detenu coming out on bail by filing a bail application.



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However, we find that there are no materials before the Detaining Authority as to the attempt made by the detenu to come out on bail by filing a bail application. The above observation, in the grounds of detention, is mere *ipse dixit* and 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:-

“10.In our opinion, if details are given by the respondent authority about the alleged bail orders in



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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.”



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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 on 27.10.2023 in Cr.M.P.No.47/GOONDA/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Selvam @ Venkatesh, aged 29 years, S/o.Ayyappan, 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

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

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To
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- 6.The Public Prosecutor,
High Court, Madras.



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