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H.C.P.No.2531 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2531 of 2023

Reshma

...Petitioner/Wife of Detenu

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George,
Chennai – 600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Erode District.
- 3.The Superintendent of Police,
Office of Superintendent of Police,
Erode District.
- 4.The Superintendent of Prison,
Central Prison Salem,
Hastampatti, Salem – 636 007.
5. The Inspector of Police,
Erode North Station,

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Erode-638 001

...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 records, related to the detention order dated 26.07.2023 passed by the 2nd respondent herein in CrI.M.P.No.21/Goonda/2023 C1 and quash the same and direct the respondent herein to produce the petitioner's husband namely Amjath Son of Noor Ahamed aged about 31 years residing at No.27/12, Erthangal Hakim Street, Vellore District – 635 810, who is presently under going detention in the Central Prison, Salem before this Court and set him at liberty forthwith.

For Petitioner : Mr.J.Prakasam

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, wife of the detenu Amjath aged about 31 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 26.07.2023 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].



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2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. The learned counsel for the petitioner though canvassed several points before this Court, this Court finds that the detention order is liable to be quashed on the ground of non application of mind with regard to the real possibility of the detenu coming out on bail. In paragraph No.5 of the grounds of detention, the Detaining Authority has stated that the detenu filed the bail application and the same was dismissed. However, there is no material before the Detaining Authority as to whether the detenu intended to file a bail application and is likely to be released on bail. The Detaining Authority has merely stated that he is aware of the real possibility of bail being granted to the detenu. This is a mere *ipse dixit* of the Detaining Authority.

4. The issue is directly covered by the judgment of 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.

11. In our opinion, the detention order in question only contains ipse dixit regarding the alleged



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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 2nd respondent dated 26.07.2023 in Cr.M.P.No.21/Goonda/2023 C1 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu 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]
08.01.2024

ars

Index : Yes / No

Neutral Citation : Yes / No



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To

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