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HCP.No.18 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM :

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

H.C.P.No.18 of 2024

Aysha Beevi Fathima Beevi

... Petitioner/mother of detainee

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

3.The Superintendent of Prison,
Central Prison,
Puzhal.

4.The Inspector of Police,
Anti Vice Squad II,
Chennai.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the detention order dated 16.11.2023 passed by the second respondent in his proceedings No.590/BCDFGISSSV/2023 and quash the same and direct the respondents herein to produce the petitioner's son namely Mohammed Riyaz @ Basha Bai, son of Mohammed Iqbal aged about 39 years, who is presently undergoing detention in the Central Prison, Puzhal, as Immoral Traffic Offender before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Vinoth

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 viz., Mohammed Riyaz @ Basha Bai, son of Mohammed Iqbal, aged about 39 years, detained at Central Prison, Puzhal, has come forward with this petition challenging the detention order passed by the second respondent dated 16.11.2023 slapped on



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her son, branding him as "Immoral Traffic Offender" 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.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the bail order in the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail, was not furnished to the detenue and instead, a dismissal order of the bail application in CrI.M.P.No.508 of 2023 was furnished to the detenue herein by the Detaining Authority, which is a total non-application of mind.



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4. On a perusal of the Grounds of Detention, it is seen that the Detaining Authority has referred to a similar case in Cr.No.9 of 2022 and stated that bail has been granted to the accused therein and had accordingly inferred that there is an imminent possibility of the detainee coming out on bail. However, a dismissal of the bail application in CrI.M.P.No.508 of 2023 in connection with Cr.No.9 of 2022 has been enclosed in the Booklet furnished to the detainee. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority suffers from total non-application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

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



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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 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



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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 16.11.2023 in No.590/BCDFGISSSV/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mohammed Riyaz @ Basha Bai, son of Mohammed Iqbal, aged about 39 years, detained in the Central Prison, Puzhal, 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]

22.03.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Anu



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To

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

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

3.The Superintendent of Prison,
Central Prison,
Puzhal.

4.The Inspector of Police,
Anti Vice Squad II,
Chennai.

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

6.The Public Prosecutor,
High Court, Madras.



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and
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