



WEB COPY



HCP.No.95 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.95 of 2025

Gomathi

... 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 Office of the Commissioner
of Police, Vepery,
Chennai – 600 007.

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

4.The Inspector of Police (L & O)
G-1, Vepery Police Station,
Chennai District.

... Respondents



HCP.No.95 of 2025

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, call for the records in Connection with the order of detention passed by the second respondent dated 12.12.2024 in BCDFGISSSV No.1230 of 2024 against the petitioner's husband Janath @ Japan son of Shyam Bahadur aged about 26 years who is confined at Central prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at Liberty.

For Petitioner : Mr.G.Vasudevan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The preventive detention order passed by the second respondent in BCDFGISSSV No.1230 of 2024 dated 12.12.2024 is sought to be quashed in the present habeas corpus petition.

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 this petition, the learned counsel for the petitioner focused mainly on the ground that the subjective satisfaction of the Detaining Authority that the relatives of the detenu are taking steps to take out the detenu on bail, suffers from non-application of mind, as the Special Report of the Sponsoring Authority is not dated. Hence, the learned counsel raised a *bona fide* doubt as to when the documents were obtained and as to the date on which the Special Report was sent by the Sponsoring Authority to the Detaining Authority. The learned counsel further pointed out that, unless the Special Report of the Sponsoring Authority is immediately before the Detention Order, it may not have relevance and hence, the subjective satisfaction of the Detaining Authority based on these undated documents, would vitiate the Detention Order.

4. On a perusal of the Grounds of Detention, it is seen that, in Para No.4, the Detaining Authority has stated that the Sponsoring Authority has stated that he came to understand that the relatives of the detenu are taking steps to take him out on bail by filing bail applications before the appropriate Court and has arrived at the subjective satisfaction that the detenu is likely to be released on bail. When the Special Report of the Sponsoring Authority is not dated, the veracity of the Report



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becomes doubtful. The compelling necessity to detain the detenu would also depend on when the Sponsoring Authority has sent his Report. In the absence of the report, the compelling necessity to detain, becomes suspect. Hence, this Court is of the view that the subjective satisfaction arrived at by the Detaining Authority based on such undated materials, 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 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.”

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.



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7. Accordingly, the detention order passed by the second respondent in proceedings BCDFGISSSV No.1230 of 2024 dated 12.12.2024, is hereby set aside and the Habeas Corpus Petition is **allowed**. The detenu *viz.*, Janath @ Japan, S/o.Shyam Bahadur, aged 26 years, confined at Central Prison, Puzhal, Chennai is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[S.M.S., J.]

[M.J.R., J.]

30.01.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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To

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2.The Commissioner of Police,
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