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HCP.No.1822 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2025

CORAM

THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR**

AND

THE HONOURABLE **MR. JUSTICE M.JOTHIRAMAN**

H.C.P.No.1822 of 2025

Famshad

... Petitioner/

Versus

1. The State of Tamil Nadu
Rep by Additional Chief Secretary
Home, Prohibition and Excise Department
St.George Fort, Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai – 600 007
- 2.The Deputy Commissioner of Police
St.Thomas Mount, Chennai – 600 016
3. The Superintendent
Central Prison, Puhzhal-I
Chennai – 600 066
4. The Inspector of Police
Law & Order
S-8, Adambakkam Police Station



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Greater Chennai – 600 088

.. Respondents

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Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus to call for the records in respect of the detention order passed by the second respondent dated 29.07.2025 in Detention Order no.BBCDEFGISSSV No.514/2025 and quash the same and consequently direct the respondents to produce the petitioner, the detainee, Famshad S/o.Mohamed aged about 26 years before this Court, now detained in the Central Prison, Puzhal-I-, Chennai – 66 and thereby, set the petitioner and liberty.

For Petitioner : Mr.P.M.Duraiswamy

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

(Order of the Court was made by **N.SATHISH KUMAR, J.**)

The petitioner, detainee, aged about 26 years, has come forward with this petition challenging the detention order passed by the second respondent dated 29.07.2025 bearing reference Detention Order no.BBCDEFGISSSV No.514/2025 slapped against the petitioner branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas,



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Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

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 submitted that the detenu was arrested and remanded to judicial custody in connection with the ground case, but the detenu has not moved any bail application and therefore, there is no real possibility of the detenu coming out on bail in the near future, however, the detaining authority while passing the impugned detention order arrived at the subjective satisfaction regarding imminent possibility of coming out on bail by relying on a bail order in CrI.M.P.No.5272 of 2023 wherein statutory bail was granted to one Sanjaykumar @ Sanjay S/o.Saravanan.

4. In this regard, the learned counsel drew the attention this Court to the order in CrI.M.P.No.5272 of 2023, which is enclosed at Page No. 155 of



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the booklet. A careful perusal of the said order, brings to light that it is a case of statutory bail under Section 167(2) of Cr.P.C. Therefore, taking a default bail order as a basis for arriving at subjective satisfaction regarding the imminent possibility of detenu being enlarged on bail shows clear non-application of mind. Therefore, the impugned preventive detention order deserves to be dislodged.

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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“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.

7. In view of the aforesaid reason, the detention order passed by the 2nd respondent dated 23.06.2025 in C3/D.O.No.23/2025 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Famshad,



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S/o.Mohamed, male, aged 26 years, is directed to be set at liberty forthwith unless he is required in connection with any other case.

[N.S.K.,J.] [M.J.R.,J.]
04.11.2025

Index: Yes/No
Neutral Citation: Yes/No
dhk

To

1. The Additional Chief Secretary
Home, Prohibition and Excise Department
St.George Fort, Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai – 600 007
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6. The Joint Secretary to Government
Public (Law & Order)

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7. The Public Prosecutor
High Court, Madras.



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