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HCP.No.1144/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1144/2023

Shalini

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Petitioner

Versus

1.The State of Tamil Nadu rep.by
its Secretary, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The District Magistrate & District Collector
Cuddalore District, Cuddalore.

3.The Superintendent of Police
Cuddalore District, Cuddalore.

4.The Superintendent of Prison
Central Prison, Cuddalore.

5.The Inspector of Police
Chidambaram Town Police Station
Chidambaram, Cuddalore District.

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Respondents



HCP.No.1144/2023

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Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records of the detention order dated 31.05.2023 in detention order C3/D.O/17/2023, on the file of the 2nd respondent herein, and quash the same and direct the respondents herein to produce the body of the detenu Siva @ Sivaraj, Hindu, aged about 24 years who is now confined in Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.S.Kasirajan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

(1)The petitioner, wife of the detenu Siva @ Sivaraj, aged 24 years, S/o.Muthukumaran, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 30.05.2023 slapped on her husband, branding him as "Drug Offender" under the Tamil Nadu Act 14 of 1982.

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



HCP.No.1144/2023

WEB COPY

(3) Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the order of detention is vitiated on the ground of non-application of mind. The Detaining Authority has relied upon a similar case, wherein, bail was granted to the accused therein in CrI.MP.No.1041/2021 on 27.09.2021 by the learned Judicial Magistrate No.3, Cuddalore. However, in the said similar case, the accused therein was found in possession of small quantity of contraband whereas in the ground case, the detenu was found in possession of intermediate quantity and hence, the said similar case cannot be cited as a similar case by the Detaining Authority to arrive at the subjective satisfaction.

(4) A perusal of the Grounds of Detention reveals that the detenu was found in possession of 1.550 Kgs of Ganja/contraband which is an intermediate quantity. However, Detaining Authority had relied upon the bail order in the similar case in CMP.No.1041/2021 dated 27.09.2021 passed by the learned Judicial Magistrate, No.3, Cuddalore. A perusal of the Booklet containing the similar case particulars, in particular, page No.150, it is seen that the accused therein was found in possession of 300 gms of Ganja/contraband, which is a small quantity and not intermediate



HCP.No.1144/2023

WEB COPY

quantity. Further, the learned Judge had also observed that the offences are bailable offence, namely, under Sections 8[c], 20[b][ii][A] of NDPS Act. Hence, the present case cannot be compared with that of the similar case relied upon by the Detaining Authority to arrive at the subjective satisfaction and the same 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. It is in the said circumstances, this Court finds that in the instant case, the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind. It is relevant to extract paragraphs No.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



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HCP.No.1144/2023

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 reason, this Court is of the view that the detention order



HCP.No.1144/2023

is liable to be quashed.

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(7) In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 30.05.2023 in C3/D.O/17/2023 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.

[S.S.S.R., J.] [S.M, J.]
01.11.2023

AP
Internet : Yes



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HCP.No.1144/2023

To

- 1.The Secretary, State of Tamil Nadu
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- 2.The District Magistrate & District Collector
Cuddalore District, Cuddalore.
- 3.The Superintendent of Police
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- 6.The Public Prosecutor
High Court, Madras.



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S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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