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H.C.P.No.1123 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

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THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.1123 of 2023

M.Chandirakala

... Petitioner

Vs.

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.District Collector and District Magistrate,
Vellore District, Vellore – 9.
- 3.The Superintendent of Police,
Vellore District, Vellore – 9.
- 4.The Superintendent of Prison,
Central Prison, Vellore – 2.
- 5.The Inspector of Police,
Pernambut Police Station,
Vellore District.

... Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the
records in connection with the order of detention passed by the
second respondent dated 16.06.2023 in C3/D.O.No.49/2023 against
the petitioner's husband Selvamoorthi @ Moorthy, male, aged 36



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years, S/o.Magi, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
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.**)

The petitioner, wife of the detenu Selvamoorthi @ Moorthy, has come forward with this petition challenging the detention order passed by the second respondent dated 16.06.2023 slapped on her husband, branding him as "Bootlegger" 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 and the learned Additional Public Prosecutor appearing for the respondents.



3. Though several grounds have been raised in the petition, the learned counsel for the petitioner submitted that subjective satisfaction arrived at by the detaining authority suffers from non-application of mind as there is no real possibility of detenu being enlarged on bail when the bail petition filed by the detenu is pending. It is seen from the grounds of detention that the detaining authority has referred to the bail petition moved by the detenu, which is pending. However, it is observed further that the detenu will come out on bail as bails are being granted by Courts in such cases.

4. In paragraph 5 of the grounds of detention, it is stated as follows:

'5. I am aware that Thiru.Selvamoorthi @ Moorthy has filed a bail application in Principal Sessions Judge, Vellore in ground case in Pernambut Police Station, Crime No.282/2023, u/s. 4(1)(i), 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act, 1937 @ 4(1)(i), 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act, 1937 r/w 328 IPC in C.M.P. No.2000/2023 and the same was dismissed on 03.06.2023. Further, Thiru.Selvamoorthi @ Moorthy has filed a bail application before Hon'ble High Court of Madras in ground case in Pernambut Police Station Crime No.282/2023, u/s. 4(1)(i), 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act, 1937 @ 4(1)(i), 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act, 1937 r/w 328 IPC in Crl.O.P.No.13202/2023 and the same is pending. As bails are being granted by courts in such cases, there is real possibility that he (Thiru.Selvamoorthi @ Moorthy) would be coming out of bail, by above pending bail application in the court.....'



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5. The facts narrated in the grounds of detention would show that the detenu was involved in five adverse cases and he was sentenced to pay fine in the first adverse case. So far as other adverse cases are concerned, the detenu escaped from the place of occurrence and he was arrested in the ground case. Insofar as the ground case is concerned, the detenu moved a bail petition before the High Court and the same is pending.

6. 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 held 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



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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.”*

7. From a reading of the aforesaid order, it is clear that the detenu has moved a bail petition in the ground case before the High Court in Crl.O.P. No.13202 of 2023 and the same is pending. When that being so, the detaining authority has arrived at the satisfaction that there is real possibility of the detenu coming out on bail in the ground case and clamped the detention order. Thus, it is clear that the satisfaction of the detaining authority that the detenu is likely to come out on bail is without any basis and is a mere *ipse dixit* of the detaining authority. The impugned detention order suffers from total non-application of mind and hence, the same is liable to be quashed.

8. In view of the aforesaid reason, the detention order passed by the second respondent dated 16.06.2023 in C3/D.O.No.49/2023,



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is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Selvamoorthi @ Moorthy, S/o.Magi, aged about 36 years, 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.)
17.11.2023

Index : Yes / No
Neutral Citation : Yes / No
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