



H.C.P.No.1111 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

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Vennila
W/o Chinnathambi .. Petitioner

v.

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009
2. District Collector & District Magistrate of
Tirupathur District, Tirupathur 635 601
3. The Superintendent of Police
Tirupathur District, Tirupathur 635 601
4. The Superintendent of Prison
Central Prison, Vellore
5. The Inspector of Police
Thimmampettai Police Station
Tirupathur District .. Respondents

Writ Petition filed under Article 226 of the Constitution of India,



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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 14.06.2023 in C3/D.O.No.12/2023 against the petitioner's husband Chinnathambi, Male aged 40 years, S/o Govinthasamy @ Periya Balaraman, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Hon'ble 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, Advocate

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

The petitioner, who is the wife of the detenu, namely, Chinnathambi, aged 40 years, S/o Govinthasamy @ Periya Balaraman, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 14.06.2023 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).



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

3. Though several grounds are raised in the petition, the learned counsel appearing for the petitioner, referring to paragraph-8 of the grounds of detention, submitted that the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the detaining authority suffers from non-application of mind and is a mere ipse dixit in the absence of details.

4. We find merits on his submissions. In paragraph-8 of the grounds of detention, the detaining authority has stated as follows:-

“8. I am aware that Tr.Chinnathambi is in remand for the offence in Thimmampettai Police Station Cr.No.86/2023 u/s 4(1)(i), 4(1)(aaa), 4(1-A)(ii) Tamil Nadu Prohibition Act, 1937 r/w 328 IPC and Magistrate has ordered to remand him under judicial custody till 02.06.2023 and confined at Sub Jail, Vaniyambadi as a remand prisoner. Further, Tr.Chinnathambi's remand has been extended till 14.06.2023. The bail application filed by him in the Court



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of District Sessions, Vellore in the ground case in Cr.No.86/2023 in Cr.M.P.No.2101/2023 to release him on bail is pending before the Court. **As the bail is being granted in such cases, there is a real possibility of him (Tr.Chinnathambi) coming out on bail in Cr.M.P.No.2101/2023 which is pending before the Honourable Sessions Court, Vellore....”**

5. A perusal of the above statement shows that the detaining authority has merely stated that “bail is being granted in such cases” without furnishing the details about the alleged similar cases in which bail was allegedly granted by the Court concerned. As this statement is mere ipse dixit, this itself is sufficient to vitiate the detention order, as held by the Hon'ble Supreme Court in the case of *Rekha v. State of Tamil Nadu through Secretary to Government and another*, (2011) 5 SCC 244, wherein it has been held as follows:-

“7. A perusal of the above statement in Para-4 of the grounds of detention shows that no details have been given about the alleged similar cases in which



bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that “in similar cases bails were granted by the courts”. In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.”

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been



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granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

In view of the law enunciated by the Hon'ble Supreme Court in Rekha's case, in the case on hand, this Court is convinced that the subjective satisfaction of the detaining authority is not based on any material and is mere ipse dixit. Therefore, the detention order is liable to be quashed.

6. Accordingly, the detention order passed by the 2nd respondent dated 14.06.2023 in C3/D.O.No.12/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Chinnathambi, S/o Govinthasamy @ Periya Balaraman, aged 40 years, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : yes/no
Neutral citation : yes/no
SS

(S.S.S.R.,J.) (S.M.,J.)
10.11.2023



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To

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Fort St.George
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6. The Public Prosecutor
High Court, Madras



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SUNDER MOHAN,J.

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