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H.C.P.No.1162 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1162 of 2023

Tamilarasi

... Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.District Collector and District Magistrate of
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



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the 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 20.06.2023 in C3/D.O.No.50/2023 against the petitioner's husband Jagan, Male aged 45 years, S/o.Subban, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before the Honble Court and set him at liberty.

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

ORDER

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

The petitioner, wife of the detenu namely Jagan, aged 45 years, S/o.Subban, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 20.06.2023 slapped on her husband, branding him as "Bootlegger" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].



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2. Heard the learned counsel 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 for the petitioner pointed out that the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail without referring to any similar order or any material.

4. On a perusal of Grounds of Detention, in Para No.5, it is stated as follows :

“5. ... I am aware that Thiru Jagan has filed a bail application in Principal Sessions Judge, Vellore in ground case in Pernambut Police station, Crime No.316/2023, 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 I.P.C in C.M.P.No.2276/2023 and the same was dismissed on 16.06.2023. But, there is real possibility that he may come out on bail by filing another bail application before appropriate Court. As bails are being granted by courts, there is most likely that of he (Thiru. Jagan) coming out on bail by



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filing another bail application before the appropriate court. If he is enlarged himself on bail, he would indulge in further activities which will be prejudicial to the maintenance of public order and public health. Further, the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order and public health. From the materials placed before me, I am satisfied that Thiru. Jagan is a Bootlegger and there is a compelling necessity to detain him from indulging in such activities which are prejudicial to the maintenance of public order and public health, under the provisions of Tamil Nadu Act 14/1982.”

5. On a reading of the above, this Court is convinced that the subjective satisfaction of the Detaining Authority is not supported by any material and it is purely the *ipse dixit* of the Detaining Authority. 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 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 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 20.06.2023 in C3/D.O.No.50/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Jagan, aged 45 years, S/o.Subban, is directed to be set at liberty forthwith unless he is required in connection with any other case.



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(S.S.S.R., J.) (S.M., J.)
20.11.2023

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Neutral Citation : Yes / No

To

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Home, Prohibition and Excise Department,
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- 6.The Public Prosecutor,
High Court, Madras.



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