



HCP.No.1264/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1264/2023

Maharaja Kumar

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Petitioner

Versus

- 1.State of Tamil Nadu rep.by
The Deputy Secretary
Home, Prohibition & Excise Department
Fort St George, Chennai-600 009.
- 2.The District Magistrate & District Collector
Nilgiris District, Nilgiris.
- 3.The Superintendent of Police
Nilgiris District, Nilgiris.
- 4.The Inspector of Police
Kotagiri Circle Police Station
Kotagiri, Nilgiris District.
- 5.The Superintendent of Prison
Central Prison, Coimbatore.

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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 calling for the records relating to the detention order in Cr.MP.No.02/2023 dated 08.06.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's brother Thiru.Kanjankumar, son of Dahaur Das, aged about 24 years, the detenu now confined in Central Prison, Coimbatore before this Court and set the petitioner's brother Thiru Kanjankumar, son of Dahaur Das, aged about 24 years the detenu herein at liberty.

For Petitioner : Mr.R.Muthukumar

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

ORDER

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

(1)The petitioner, brother of the detenu Kanjankumar, son of Dahaur Das, aged 24 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 08.06.2023 slapped on his brother, 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.



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(3)The learned counsel for the petitioner though canvassed several points before this Court, contended that there is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction that the detenu is likely to be released on bail in the ground case.

(4)In the Grounds of Detention, in particular, paragraph No.5, the Detaining Authority has stated as follows:-*"I am aware that Thiru Kanjankumar is now lodged at Central Prison, Coimbatore as a remand prisoner in the Nilgiris District, Kothagiri Police Station Crime No.141/2023 under Section 8[c] read with 20[b][ii][B], 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, case and in the above case his remand period has been extended till 22.06.2023. He has filed a bail petition before the Special Court for Essential Commodities Act, Coimbatore, in CMP.No.1976/2023 dated 05.06.2023. This will be taken on 09.06.2023. However, I am also aware it is real possibility he has coming out bail in the above case by filing bail petition before the concerned court of law in future. Because, it has been revealed that under section 437 of the Criminal Procedure Code, if the arrested person committed non bailable offences, it shall be on consideration about the*



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offence committed the person, he may released on bail till the period of consideration...".

(5)A reading of paragraph No.5 of the Grounds of Detention indicates that there is total non application of mind. It is also seen that the Detaining Authority has not relied upon any similar order and therefore, the subjective satisfaction of the Detaining Authority is purely an *ipse dixit* statement. Hence, the subjective satisfaction of the Detaining Authority suffers from non-application of mind.

(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 considered a case where it is stated that in the grounds of detention that relatives of detenu are taking action to take him on bail in the criminal case in which the detenu was in remand and that in similar cases, bail was granted by Courts. Since no details had been given about the alleged similar cases in which bail was allegedly granted by the Court concerned, it is held by Hon'ble Supreme Court that in the absence of details, the statement which is mere *ipse dixit*, cannot be relied upon and that itself is sufficient to vitiate the detention order. When the subjective



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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.



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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) 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 is liable to be quashed.

(8) Accordingly, the detention order passed by the 2nd respondent dated 08.06.2023 in Cr.MP.No.02/2023 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.]
09.11.2023

AP
Internet : Yes



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- To
- 1.The Deputy Secretary
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai-600 009.
 - 2.The District Magistrate & District Collector
Nilgiris District, Nilgiris.
 - 3.The Superintendent of Police
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 - 5.The Superintendent of Prison
Central Prison, Coimbatore.
 - 6.The Public Prosecutor
High Court, Madras.



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

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