



WEB COPY



H.C.P.No.1231 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

H.C.P.No.1231 of 2023

Ganga Devi
W/o Natarajan

..

Petitioner

v.

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai 600 009
 2. The District Collector and District Magistrate
Cuddalore District, Cuddalore
 3. The Superintendent of Police
Cuddalore, Cuddalore District
 4. The Superintendent of Prison
Central Prison - Cuddalore
Cuddalore District
 5. State rep.by its the Inspector of Police
Thirupapuliyur Police Station
Cuddalore District
- .. Respondents



H.C.P.No.1231 of 2023

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the entire records, relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 10.06.2023 on the file of the second respondent herein made in proceedings Memo C3/D.O./21/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Vilangu @ Natarajan, S/o Egambaram, aged 36 years before this Hon'ble Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Cuddalore.

For Petitioner :: Mr.R.Sasikumar

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, Vilangu @ Natarajan, aged 36 years, S/o Egambaram, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 10.06.2023 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).



H.C.P.No.1231 of 2023

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-6 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-6 of the grounds of detention, the detaining authority has stated as follows:-

“6. I am aware that Thiru.Vilangu @ Natarajan, S/o Egambaram has been remanded in judicial custody upto 09.06.2023 and lodged at Sub Jail, Cuddalore in connection with Thirupapuliyur Police Station in Cr.No.269/2023 u/s. 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act, 1937. I am aware that he has already filed a bail application before the Court of District Sessions



H.C.P.No.1231 of 2023

Judge, Cuddalore on 01.06.2023 in CrI.M.P.No.3910/2023 and is pending. (copy enclosed). In similar case in Thiruppapuliyur P.S.Cr.No.735/2022, u/s 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act, 1937 bail was granted to the accused (Vijayalakshmi W/o Kumar) by the Court of District Sessions Judge, Cuddalore in CrI.M.P.No.7370/2022 dated 24.11.2022. (copy enclosed). Hence, I infer that there is likelihood of him (Thiru Vilangu @ Natarajan, S/o Egambaram) coming out on bail in Thiruppapuliyur Police Station in Cr.No.269/2023, **since bail is granted by the competent courts in such cases...**

5. A perusal of the above statement shows that the detaining authority has merely stated that “bail is granted by the competent courts in such cases” without furnishing the details about the alleged similar cases in which bail was allegedly granted by the Court concerned. There are four adverse cases against the detenu in this case, whereas the bail granted to the accused in similar case is not similar. Hence the 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 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 10.06.2023 in C3/D.O./21/2023 is hereby set aside and the habeas corpus



H.C.P.No.1231 of 2023

petition is allowed. The detenu viz., Vilangu @ Natarajan, S/o Egambaram, aged 36 years, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : yes/no

(S.S.S.R.,J.)

(S.M.,J.)

Neutral citation : yes/no

10.11.2023

SS

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai 600 009
2. The District Collector and District Magistrate
Cuddalore, Cuddalore District
3. The Superintendent of Police
Cuddalore, Cuddalore District
4. The Superintendent of Prison
Central Prison - Cuddalore
Cuddalore District
5. The Inspector of Police
Thirupapuliyur Police Station
Cuddalore District
6. The Public Prosecutor
High Court, Madras



WEB COPY



H.C.P.No.1231 of 2023

S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

SS

H.C.P.No.1231 of 2023

10.11.2023