



HCP.No.1483/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1483/2023

K.Elumalai

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Petitioner

Versus

1.The State of Tamil Nadu
rep.by the Secretary,
Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The District Collector and District Magistrate
Cuddalore District.

3.The Superintendent of Police
Cuddalore District, Cuddalore.

4.The Superintendent,
Special Prison for Women
Vellore.

5.The Inspector of Police
Prohibition Enforcement Wing
Vridhachalam, Cuddalore District.

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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 pertaining to the order of detention passed by the 2nd respondent dated 19.06.2023 in circumstantial evidence/D.O/29/2023 against the petitioner now confined at Special Prison for Women at Vellore and set aside the same and direct the respondent to produce the detenue Tmt.Dhanalakshmi aged 35 years, wife of Elumalai before this Court and set her at liberty.

For Petitioner : Mr.R.Sethuvarayan
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.]

- (1)The petitioner, husband of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 19.06.2023 slapped on his wife, branding her 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.
- (3)Though several grounds are raised in the petition, the learned counsel for the petitioner made the following submissions:-



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- (a) The order of Detention passed by the Detaining Authority suffers from non application of mind. The bail order pertaining to the detenu in the ground case in CrI.MP.No.3475/2023 in the English version in the Booklet, insofar as recording of the previous cases, differs in the vernacular version.
- (b) The similar case relied upon by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail, is not similar.
- (c) There is a delay of three days in considering the representation submitted by the detenu to the authorities concerned.
- (4) On a perusal of the Booklet, in particular, page No.74, it is seen that dismissal order of the detenu's bail application in the ground case is furnished and in paragraph No.3, the learned Judge has recorded the fact that the detenu was involved in eight previous cases. However, in the vernacular version of the said order, it has been wrongly translated as 'four previous cases'. Hence, it is seen that there is an improper translation of the dismissal order of the bail petition filed by the detenu in the vernacular version.



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(5) It is in the said circumstances, this Court finds that serious prejudice is caused to the detenu on account of improper translation in making effective representation against the Detention Order and that the Detention Order passed by the Detaining Authority is vitiated.

(6) In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in *Powanammal Vs. State of Tamil Nadu* reported in **(1999) 2 SCC 413**. The Hon'ble Supreme Court had occasion to deal with similar situation where in the Grounds of Detention referred to an order remanding the detenu therein to judicial custody was in English language. Since the tamil version of the document was not supplied to the detenu therein, a specific issue was raised by the Hon'ble Supreme Court whether failure to supply tamil version of the remand order passed in English, a language not known to the detenu therein, would vitiate the detenu's further detention. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22[5] of the Constitution, observed that the detenu should be afforded an opportunity of making representation effectively against the Detention Order and that, the failure to supply every material in the language which can be understood by the detenu, is



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imperative. In the said context, the Hon'ble Supreme Court has held in Paragraphs 9 and 16 {as in SCC journal} as follows:

"9.However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the



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language known to and understood by the detenu, should the document be in a different language.

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16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."

(7)The second ground raised by the learned counsel for the petitioner is 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 as the order passed in the similar case in CrI.MP.No.4762/2022 by the learned Additional District Judge, Special Court under EC Act, Thanjavur, is not similar to the present case. Learned counsel pointed out that the learned Judge while granting bail to the accused in the similar case, had taken note of the fact that the accused therein has got no previous case. Whereas, the detenu herein has got two previous case. Hence, the said case cannot be compared to the case of the



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detenu.

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(8) This Court, upon examination of the records, is unable to discard the said contention of the learned counsel for the petitioner. From a perusal of the Booklet, in particular, pages No.82, it is seen that the Detaining Authority has relied upon the said bail order in Crl.MP.No.4762/2022 granted to the accused therein, to arrive at the subjective satisfaction that the detenu herein is likely to be released on bail in the ground case. However, it is to be pointed out that the learned Judge while granting bail in Crl.MP.No.4762/2022 has particularly recorded the fact that the accused therein has got no previous case. Whereas, the detenu herein has got two previous cases. The Detaining Authority has not taken into consideration this vital aspect, while arriving at the subjective satisfaction. Hence, the subjective satisfaction of the Detaining Authority suffers from non-application of mind.

(9) 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



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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 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



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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."



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(10)The third contention raised by the learned counsel for the petitioner is, the delay in considering the representation submitted by the detenu. According to the learned counsel for the petitioner, though the representation dated 21.07.2023, was received by the Government on the 24.07.2023 ; and though the file has been dealt with by the Deputy Secretary on 25.07.2023, the Minister concerned dealt with the file only on 31.07.2023 and the Rejection Letter prepared on the same day, was sent to the detenu on 01.08.2023. It is the further submission of the learned counsel that this inordinate delay in considering the representation remains unexplained and the same vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***Rajammal vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***

(11)As per the submission of the learned counsel for the petitioner and on perusal of the records, we find that, the representation of the detenu, dated 21.07.2023, which was received by the Government on 24.07.2023, was dealt with by the Minister concerned only on 31.07.2023 and the Rejection Letter was prepared on the same day. Thus, we find there is a



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considerable delay of three days [after excluding the intervening Saturday and Sunday [29.05.2023 and 30.05.2023]] in considering the representation of the petitioner. This inordinate delay in considering the detenu's representation remain unexplained.

(12) It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the inordinate delay. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

(13) In the judgment of the Hon'ble Supreme Court in ***Rajammal's case*** (*cited supra*), it has been held as follows:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of



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the Constitution for the decision to be taken on the representation, the words "as soon as may be " in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

(14)As per the dictum laid down by the Supreme Court in above cited **Rajammal's case**, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here the inordinate delay of three days, has not been properly explained at all.

(15)Further, in a recent decision in **Ummu Sabeena vs. State of Kerala - 2011 STPL (Web) 999 SC**, the Hon'ble Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India clearly shows the concern of the makers of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

(16)In the light of the above fact and law, we also have no hesitation in



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quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the detenu.

(17) Accordingly, the detention order passed by the 2nd respondent dated 19.06.2023 in CD/D.O/29/2023 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.]
23.11.2023

AP

Internet :Yes

To

- 1.The Secretary, State of Tamil Nadu
Prohibition & Excise Department
Fort St George, Chennai 600 009.
- 2.The District Collector and District Magistrate
Cuddalore District.
- 3.The Superintendent of Police
Cuddalore District, Cuddalore.
- 4.The Superintendent,
Special Prison for Women
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5.The Inspector of Police
Prohibition Enforcement Wing
Vridhachalam, Cuddalore District.

6.The Public Prosecutor
High Court, Madras.



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AND
SUNDER MOHAN, J.,

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