



HCP.No.1439/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.12.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1439/2023

Dharani

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Petitioner

Versus

- 1.The Secretary to Government
Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The District Collector and District Magistrate
of Ranipet District, Ranipet 1.
- 3.The Superintendent of Police
Ranipet District, Ranipet-1.
- 4.The Superintendent of Prison
Central Prison, Salem.
- 5.The Inspector of Police
Ranipet PEW Police Station
Ranipet 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 in connection with the order of detention passed by the 2nd respondent dated 17.07.2023 in B3/DO/No.28/2023 against the petitioner son Kumaresan, male, aged 29 years, son of Narayanan who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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, mother of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 17.07.2023 slapped on her son, 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) Though several points have been raised by the petitioner, the learned counsel for the petitioner submitted 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.565/2023 by the learned Special Judge for EC Act Cases, Salem, 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, the learned Judge had taken note of the fact that the accused therein had got no previous cases. Whereas, it is not so in the case of the detenu. Hence, it is stated that the detention order is liable to be quashed on the ground of total non application of mind.

(4) This Court, upon examination of the records, is unable to discard the contention of the learned counsel for the petitioner. From a perusal of the Booklet, in particular, pages No.45 and 46, it is seen that the Detaining Authority has relied upon the bail order in CrI.MP.No.565/2023 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.



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However, it is to be pointed out that the learned Judge while granting bail in CrI.MP.No.565/2023 has particularly recorded the fact that the accused therein has got no previous case. Whereas, the detenu herein has got one previous case. 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.

(5)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 satisfaction was irrational or there was non-application of mind, the



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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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To

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- 6.The Public Prosecutor
High Court, Madras.



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S.S.SUNDAR, J.,

AND

SUNDER MOHAN, J.,

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