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H.C.P.No.1441 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1441 of 2023

Vijayalakshmi
W/o Saravanan

..

Petitioner

v.

1. The State of Tamil Nadu
represented by its
The Additional Chief Secretary to Government (Home),
Prohibition and Excise Department
Secretariat, Fort St.George
Chennai 600 009
2. The District Collector and District Magistrate
O/o District Collector and District Magistrate
Villupuram District, Villupuram
3. The Superintendent
Central Prison, Cuddalore District
4. The Superintendent of Police
O/o Superintendent of Police
Villupuram District
Villupuram



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5. The Inspector of Police
Villupuram Taluk Police Station
Villupuram District

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the entire records relating to the impugned order of detention passed by the second respondent in Rc.No.C2/47038/2023 dated 14.07.2023 and set aside the same and consequently direct the respondents to produce the detenu Saravanan, son of Kaliyan, aged about 35 years, petitioner's husband now confined at Central Prison, Cuddalore before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :: Mr.S.Saravana Kumar

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, Saravanan, aged 35 years, S/o Kaliyan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 14.07.2023 slapped on her husband, branding him as 'Goonda' under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders,



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Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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-5 of the grounds of detention, submitted that the detaining authority has stated that the relatives of the detenu are taking steps to file bail application. However, the learned counsel pointed out that there is no material and not even a report is obtained from the sponsoring authority on this. Therefore, 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 any material.

4. On perusal of the records, this Court finds that the detaining authority has merely stated that the relatives of the detenu are taking steps to



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file bail application in the ground case without there being any material produced in this regard. In the said circumstances, the subjective satisfaction of the detaining authority is based on a mere ipse dixit and suffers from non-application of mind, 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



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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."

It is also to be noted that there is a delay of 3 days in disposal of the representation submitted on behalf of the detenu. The statement produced before this Court shows that though the representation dated 09.08.2023



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was received on 11.08.2023, the file was dealt with by the Deputy Secretary to Government on 14.08.2023. Thereafter, the Minister has rejected the representation on 21.08.2023, even though 16.08.2023, 17.08.2023 & 18.08.2023 were working days.

5. In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 14.07.2023 in Rc.No.C2/47038/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Saravanan, S/o Kaliyan, aged 35 years, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (S.M.,J.)
11.12.2023

ss

To

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Home, Prohibition and Excise Department
Fort St.George
Chennai 600 009



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6. The Public Prosecutor
High Court, Madras



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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

SS

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