



HCP.No.1469/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1469/2023

Surekha

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Petitioner

Versus

- 1.The Additional Chief Secretary to
Government, Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police/Detaining Authority
Chennai City, Greater Chennai
Chennai.
- 3.The Superintendent of Prison
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police
Prohibition Enforcement Wing,
Adyar, Chennai.

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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 entire records connected with the detention order of the 2nd respondent in Memo No. BCDFGISSSV No.305/2023 dated 11.07.2023 and quash the same and direct the respondents to produce the body and person of the petitioner husband namely Saravanan, son of Ganesan, aged 35 years detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.S.Manikandan
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, wife of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 11.07.2023 slapped on her husband, 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.662/2018 by the learned Principal Special Judge, Principal Special Court under EC&NDPS Act, Chennai, 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 recorded the fact that the co-accused to the accused therein was granted bail and that the accused therein was in the judicial custody for more than 43 days. 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, page No.118, it is seen that the Detaining Authority has relied upon the bail order in CrI.MP.No.662/2018 granted to the accused therein, to arrive at the subjective satisfaction that the



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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 CrI.MP.No.662/2018 has particularly recorded the fact that the accused therein was in judicial remand for more than 43days and that the co-accused to the accused therein was released on bail. The case of the detenu herein is not similar to that of the case in CrI.MP.No.662/2018. Hence, it cannot be compared with. 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



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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 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



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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."

(6) In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

(7) Accordingly, the detention order passed by the 2nd respondent dated 11.07.2023 in BCDFGISSSV No.305/2023 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.

[SSSRJ] [SMJ]
01.12.2023

AP
Internet : Yes



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To

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- 2.The Commissioner of Police/Detaining Authority
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Chennai.
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- 5.The Public Prosecutor
High Court, Madras.



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

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