



HCP.No.1521/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1521/2023

Kalaivani

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Petitioner

Versus

1.The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Avadi City, Avadi.

3.The Superintendent of Police
Central Prison, Puzhal, Chennai 600006.

4.The Inspector of Police
Prohibition Enforcement Wing
Ambattur Unit, Avadi City.

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Respondents

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



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in detention passed in Memo.No.111/BCDFGISSSV/2023 dated 29.04.2023 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner husband namely Baskaran, son of Pandi, male aged 35 years, who is detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Na.Manimaran
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

(1)The petitioner, wife of the detenu Baskaran, aged 35 years, S/o.Pandi, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 29.04.2023 slapped on her husband, branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

(2)Heard the learned counsel for the petitioner and the learned Additional



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Public Prosecutor appearing for the respondents.

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(3) Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the order of detention is vitiated on the ground of non-application of mind. The Detaining Authority has relied upon a similar case wherein, bail was granted to the accused therein. However, in the ground case, the detenu was found in possession of commercial quantity of ganja, whereas, the accused in the similar case was found in possession of intermediate quantity and hence, the said case cannot be cited as a similar case by the Detaining Authority to arrive at the subjective satisfaction.

(4) A perusal of the Grounds of Detention reveals that the detenu was found in possession of 22Kgs of Ganja which is a commercial quantity. However, Detaining Authority had relied upon the bail order in a similar case in CrI.MP.No.1842/2020 passed by the Principal Special Court under EC&NDPS Act Cases, Chennai. However, on a perusal of the Booklet containing the similar case particulars, it is seen that the accused therein was found in possession of intermediate quantity and not commercial quantity.



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(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 dealt with a situation where the Detention Order is passed without an application of mind. In case any of the reasons stated in the order of detention is non-existent or a material information is wrongly assumed, that will vitiate the Detention Order. It is in the said circumstances, this Court finds that in the instant case, the subjective satisfaction arrived at by the Detaining Authority appears to be irrational and suffers from non-application of mind. Hence, on this sole ground, the Detention Order is liable to be quashed.

(6) In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 29.04.2023 in No.111/BCDFGISSSV/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Baskaran, S/o.Pandi, aged 35 years, 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.]
13.10.2023

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To

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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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