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HCP.No.1517/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1517/2023

Rekha

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Petitioner

Versus

- 1.The Secretary to Government
Government of Tamil Nadu
[Home] Prohibition and Excise Department
Fort St George, Chennai.
- 2.The District Collector & District Magistrate
Vellore District, Vellore-9.
- 3.The Superintendent of Police
Vellore District, Vellore.
- 4.The Superintendent
Central Prison, Vellore, Vellore District.
- 5.The Inspector of Police
Pernambut Police Station
Pernambut, Vellore 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 relating to the impugned order C3/DO.No.57/2023 dated 30.06.2023 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce namely Kanthakumar son of Ashokkumar, aged about 41 years now confined at Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.G.Vinodhkumar
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 detenue herein, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 30.06.2023 slapped on her husband, branding her as "Bootlegger" 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 grounds are raised in the petition, the learned counsel for the petitioner contended that the bail order in the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the detenu is likely to be released on bail, was obtained during COVID-19 situation and that placing reliance on such order shows the non-application of mind on the part of the Detaining Authority. The learned counsel further submitted that the bail application filed by the detenu in the ground case has been furnished in the Booklet only in English and not in the vernacular language. This has deprived the detenu a fair opportunity from making effective representation against the detention order before the authorities concerned.

(4) On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail in similar case in CrI.MP.No.1206/2021 passed by the learned Principal Sessions Judge, Vellore. However, in the Booklet, in particular, page No.65, it is seen that the bail order in the similar case was obtained during COVID-19 situation and bail was granted to the accused therein with a specific reference to COVID-19. It is in the said circumstances, this Court finds that the



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subjective satisfaction arrived at by the Detaining Authority to hold that the detenu is likely to be released on bail, 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 case, 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:-



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"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.

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



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sustained."

(6)The second contention raised by the learned counsel for the petitioner is that the bail application filed by the detenu has been furnished only in English version in the Booklet and the translated copy of the same in the vernacular language is not found in the Booklet. This Court, on perusal of the Booklet, is unable to discard the said contention of the learned counsel for the petitioner. It is in the said circumstances, this Court finds that serious prejudice is caused to the detenu on account of non furnishing of vital document in the vernacular language and he is deprived of a fair opportunity in making effective representation against the Detention Order and that the Detention Order passed by the Detaining Authority is vitiated.

(7)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 detenue



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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 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



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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 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."

(8) 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



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liable to be quashed.

(9) Accordingly, the detention order passed by the 2nd respondent dated 30.06.2023 in C3/DO.No.57/2023 is hereby set aside and the Habeas Corpus Petition is allowed. The detainee is directed to be set at liberty forthwith unless she is required in connection with any other case.

[SSSRJ] [SM J]
30.11.2023

AP

Internet: Yes

To

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6. The Public Prosecutor
High Court, Madras.

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

AP

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