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H.C.P.No.1514 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM :

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

H.C.P.No.1514 of 2023

Lalitha

W/o Dachanamoothi

..

Petitioner

v.

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

2. The Commissioner of Police
Greater Chennai, Chennai District

3. The Superintendent of Police
Central Prison, Puzhal
Chennai 600 066

4. The Inspector of Police
R-5 Virugambakkam Police Station
Chennai District

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Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Habeas Corpus, to call for the records in
connection with the order of detention passed by the 2nd respondent dated



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12.06.2023 in No.226/BCDFGISSSV/2023 against the petitioner's grandson Kuthirai Suresh @ Sureshkumar, M/A.25, S/o Saravanan, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner :: Mr.M.Anand

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 grandmother of the detenu, namely, Kuthirai Suresh @ Sureshkumar, aged 25 years, S/o Saravanan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 12.06.2023 slapped on her grandson, 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, 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



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learned Additional Public Prosecutor appearing for the respondents.

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3. Though several grounds are raised in the petition, the learned counsel appearing for the petitioner, referring to paragraph-4 of the grounds of detention, submitted that the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the detaining authority is not based on any material and the statement that the detenu is likely to be released on bail, is a mere ipse dixit, in the absence of details.

4. We find merits on his submissions. In paragraph-4 of the grounds of detention, the detaining authority has stated as follows:-

“4. I am aware that Thiru.Kuthirai Suresh @ Sureshkumar is in remand in R-5 Virugambakkam Police Station Crime No.315/2023 and he has not moved any bail application for R-5 Virugambakkam Police Station Crime No.315/2023 so far. However, the sponsoring authority has stated that, it is came to know that the relatives of Thiru.Kuthirai Suresh @ Sureshkumar are taking steps to take him out on bail for R-5 Virugambakkam Police Station Crime No.315/2023 by filing bail application



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before the appropriate court. **Hence, I infer that there is a real possibility of his coming out on bail by filing bail application for R-5 Virugambakkam Police Station Crime No.315/2023 before the appropriate court...**”

5. A perusal of the above statement shows that the detaining authority has merely recorded that there is a real possibility of the detenu coming out on bail on mere ipse dixit without any material. Therefore, the subjective satisfaction of the detaining authority 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



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cases on the same footing as the case of the accused....

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 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, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

In view of the law enunciated by the Hon'ble Supreme Court in Rekha's case, this Court is convinced that the detention order in the case on hand is liable to be quashed.

6. Accordingly, the detention order passed by the 2nd respondent dated



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12.06.2023 in No.2226/BCDFGISSSV/2023 is hereby set aside and the

habeas corpus petition is allowed. The detenu viz., Kuthirai Suresh @

Sureshkumar, S/o Saravanan, aged 25 years, is directed to be set at liberty

forthwith, unless he is required in connection with any other case.

Index : yes/no

(S.S.S.R.,J.)

(S.M.,J.)

Neutral citation : yes/no

10.11.2023

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High Court, Madras



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