



HCP.No.1544/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2023

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THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1544/2023

Sarala

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Petitioner

Versus

**1.The Additional Chief Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai-9.**

**2.The Commissioner of Police
Avadi City, Avadi, Chennai.**

**3.The Superintendent
Central Prison, Puzhal, Chennai-66.**

**4.The Inspector of Police
Mangadu Police Station
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 records in



HCP.No.1544/2023

Memo No.172/BCDFGISSSV/2023 on the file of the 2nd respondent, quash the detention order dated 05.07.2023 and produce the detenu Janarthanan @ Jana son of Krishnamoorthy presently detained as a Drug Offender at the Central Prison, Puzhal, Chennai under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.A.M.Rahamath Ali
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 05.07.2023 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.
- (3)Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the bail order in the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction that the



HCP.No.1544/2023

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detenu is likely to be released on bail in the ground case, was obtained since the learned Additional Public Prosecutor had not objected for grant of bail to the accused therein and that the accused therein had got no previous case.

(4) On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail passed in the similar case in CrI.MP.No.1414/2021 passed by the learned Principal Special Judge under EC&NDPS Act, Chennai, to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the ground case. However, a perusal of the Booklet, in particular, page No.105, it is seen that bail was granted by the Court below by recording the fact that the accused therein has got no previous case. However, the detenu herein has got two adverse cases. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

(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**



HCP.No.1544/2023

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[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 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



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HCP.No.1544/2023

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 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.



HCP.No.1544/2023

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(7) Accordingly, the detention order passed by the 2nd respondent dated 05.07.2023 in Memo No.172/BCDFGISSSV/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.

[S.S.S.R., J.] [S.M, J.]
30.11.2023

AP
Internet : Yes



HCP.No.1544/2023

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- 5.The Public Prosecutor
High Court, Madras.



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HCP.No.1544/2023

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

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H.C.P.No.1544/2023

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