



HCP.No.1532/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1532/2023

Sharmila

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Petitioner

Versus

1.The Additional Chief Secretary,
Government of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai, O/o.The Commissioner
of Police, Vepery, Chennai 600 007.

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

4.The Inspector of Police
S7 Madipakkam Police Station
Chennai.

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Respondents



HCP.No.1532/2023

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus calling for the records pertaining to the order of detention passed by the 2nd respondent herein and made in BCDFGISSSV No.216/2023 dated 08.06.2023 and to set aside the same and directing the 3rd respondent to produce the detenu petitioner's son, Bhunaneswar @ Mukesh, aged 22 years son of Muthukumar, now confined in Central Prison, Puzhal, Chennai, before this Court and thereby setting him at liberty.

For Petitioner : Mr.B.Kalaiarasan
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, mother of the detenu Kannan, aged 34 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 08.06.2023 slapped on her son, branding him as "Goonda" 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 points have been raised by the petitioner, the learned counsel for the petitioner raised the following points for consideration:-



HCP.No.1532/2023

- (a)The Seizure Mahazar in the Ground Case has been furnished in English language and has not been translated in the vernacular language. The detenu has studied upto 9th standard only.
- (b)The Booklet, the documents pertaining to the Observation Mahazar which are in pages No.7 and 8, are illegible and could not be read.
- (c)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 Crl.MP.No.2054/2023 by the learned Sessions Judge, 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 observed that the accused therein has got only one previous case. Whereas, the detenu in the present case has seven previous cases.

Hence, it is stated that the detention order is liable to be quashed on the above grounds and the order of detention is vitiated on the ground of total non application of mind and depriving of the detenu from making effective



HCP.No.1532/2023

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representation against the detention order to the authorities concerned.

(4) This Court, upon examination of the records, is unable to discard any of the contentions of the learned counsel for the petitioner. It is seen from pages No.7 and 8 of the Booklet furnished to the detenu, that the document pertaining to the Observation Mahazar in the ground case are not clear and the said document is illegible. Further, a perusal of page No.189 of the Booklet would reveal that the English version of the Seizure Mahazar has not been translated in the vernacular language. This non furnishing of the vital document in vernacular language and furnishing of illegible copies of the documents would deprive the detenu of making effective representation to the authorities against the order of detention.

(5) 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



HCP.No.1532/2023

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language. Since the tamil version of the document was not supplied to the detenu 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 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



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HCP.No.1532/2023

such a document would amount to 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."

(6)The third ground raised by the learned counsel for the petitioner is also substantiated. From a perusal of the Booklet, in particular, page No.253,



HCP.No.1532/2023

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it is seen that the Detaining Authority has relied upon the said bail order in CrI.MP.No.2054/2023 granted to the accused therein, to arrive at the subjective satisfaction that the 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.2054/2023 has particularly observed that the accused therein had got only one previous case. Whereas, the detenu herein has got seven previous cases. 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.

(7)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



HCP.No.1532/2023

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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



HCP.No.1532/2023

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."

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

(9) Accordingly, the detention order passed by the 2nd respondent dated 08.06.2023 in BCDFGISSSV No.216/2023 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]
09.11.2023

AP
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HCP.No.1532/2023



HCP.No.1532/2023

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To

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Government of Tamil Nadu
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- 2.The Commissioner of Police
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of Police, Vepery, Chennai 600 007.
- 3.The Superintendent
Central Prison, Puzhal,
Chennai 600 066.
- 4.The Inspector of Police
S7 Madipakkam Police Station
Chennai.
- 5.The Public Prosecutor
High Court, Madras.