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H.C.P.No.1560 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM :

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

H.C.P.No.1560 of 2023

Durga
W/o Viji

..

Petitioner

v.

1. The State rep. by
The Secretary to Government of Tamil Nadu
Home, Prohibition and Excise
Secretariat, Chennai 600 009
2. The District Collector and District Magistrate
Cuddalore District, Cuddalore
3. The Superintendent of Prison
Central Prison, Cuddalore
4. The Inspector of Police
Kattumannarkoil Police Station
Kattumannarkoil
Cuddalore District

..

Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Habeas Corpus, directing the second



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respondent to produce the detenu Viji son of Kalyanasundaram aged about 39 years resident of Chidambaram Main Road, Lalpettai, Kattumannarkoil Taluk, Cuddalore District now confined at Central Prison, Cuddalore as per the order of the preventive detention passed by the second respondent under Act 14 of 1982 before this Hon'ble Court, and call for the records pertaining to the detention order of the second respondent in C3/D.O/33/2023 dated 13.07.2023 and quash the same and set the detenu at liberty.

For Petitioner :: Mr.G.Pugazhenth

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 wife of the detenu, namely, Viji, aged 39 years, S/o Kalyanasundaram, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 13.07.2023 slapped on her husband, branding him as 'Bootlegger' 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).



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2. Heard the learned counsel appearing 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 appearing for the petitioner pointed out that the bail order relied upon by the detaining authority in CrI.M.P.No.688 of 2020 dated 31.01.2020 in respect of the accused in similar case, is not similar to the case on hand. Referring to the order relied upon by the detaining authority, the learned counsel pointed out that bail was granted to the accused therein on the ground that the detention order against the accused therein was quashed by the High Court and that the bail was not seriously opposed by the learned Public Prosecutor in that case. Therefore, he submitted that the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the detaining authority suffers from non-application of mind and is a mere ipse dixit in the absence of details.

4. On perusal of the records, we confirm the statement of the learned counsel for the petitioner, as the detaining authority has merely stated that



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“bail is granted by courts in such cases” without furnishing the details about the alleged similar cases in which bail was allegedly granted by the Court concerned, when there are five adverse cases against the detenu herein apart from the ground case. Hence the subjective satisfaction of the detaining authority suffers from total non-application of mind and is a mere ipse dixit, 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 cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that “in similar cases bails were granted by the



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courts". 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, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. 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



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case, this Court is convinced that the impugned detention order is liable to be quashed.

5. Accordingly, the detention order passed by the 2nd respondent dated 13.07.2023 in C3/D.O./33/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Viji, S/o Kalyanasundaram, aged 39 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

11.12.2023

SS

To

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Home, Prohibition and Excise Department
Secretariat
Chennai 600 009
2. The District Collector and District Magistrate
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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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