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H.C.P.No.1561 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.1561 of 2023

Anusuya
W/o Suresh

..
v.

Petitioner

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai 600 009
2. The District Collector and District Magistrate
Cuddalore District, Cuddalore
3. The Superintendent of Police
Cuddalore, Cuddalore District
4. The Superintendent of Prison
Central Prison, Cuddalore
Cuddalore District
5. State rep.by its
The Inspector of Police
PEW Virudhachalam Police Station
Cuddalore District

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 15.07.2023 on the file of the second respondent herein made in proceedings Memo C3/DO/34/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Suresh, S/o Ayyasamy, aged 42 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison Cuddalore.

For Petitioner :: Mr.R.Sasikumar

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, Suresh, aged 42 years, S/o Ayyasamy, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 14.07.2023 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



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(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 submitted that the detaining authority came to the conclusion that the detenu is likely to be released on bail, by referring to an order passed in CrI.M.P.No.4369 of 2021 dated 12.07.2021. The learned counsel pointed out that the offences that were referred to in the similar case, are not similar to the case on hand. He also pointed out that bail was granted to the accused in similar case during Covid-19 pandemic situation. Referring to the condition that was imposed on the accused therein, the learned counsel submitted that the impugned detention order suffers from total non-application of mind.

4. This Court, on perusal of the records, finds that bail was granted to the accused in similar case during the Covid-19 pandemic period. Apart



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from that, the offences that were referred to in the order granting bail to the accused therein, are not similar to the ground case alleged against the detenu herein. In such circumstances, the subjective satisfaction of the detaining authority that the detenu is likely to be released on bail, 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



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, the impugned detention order is liable to be quashed.

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5. Accordingly, the detention order passed by the 2nd respondent dated 14.07.2023 in C3/D.O./34/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Suresh, S/o Ayyasamy, aged 42 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

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SS

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6. The Public Prosecutor
High Court, Madras



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