



HCP.No.1573/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.10.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1573/2023

Kalarani

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Petitioner

Versus

1.The State of Tamil Nadu rep.by
Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Office of the Commissioner.
Coimbatore City, Coimbatore 641 018.

3.The Superintendent of Prison
Central Prison, Coimbatore 641 018.

4.The Inspector of Police
Peelamedu Police Station
Peelamedu, Coimbatore City
Coimbatore 641 004.

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Respondents



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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 detention order passed in C.No.47/G/IS/2023 order dated 26.05.2023 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu, i.e, the body of Ajithkumar, S/o.Kannan, male, aged about 24 years, the detenu detained under Act 14 of 1982 in detention order C.No.47/G/IS/2023 order dated 26.05.2023 herein now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.V.Purushothaman Reddy
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

(1)The petitioner, mother of the detenu Ajithkumar, aged 24 years, S/o.Kannan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 26.05.2023 slapped on her son, 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.



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(3) Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the order of detention is vitiated on the ground of non-application of mind. The Detaining Authority has relied upon the adverse case of the detenu wherein, bail was granted to the detenu. However, in the said adverse case, the detenu herein was found in possession of small quantity of contraband whereas in the ground case, the detenu was found in possession of intermediate quantity and hence, the said adverse case cannot be cited as a similar case by the Detaining Authority to arrive at the subjective satisfaction.

(4) A perusal of the Grounds of Detention reveals that the detenu was found in possession of 3.030 Kgs of Ganja/contraband which is an intermediate quantity. However, Detaining Authority had relied upon the bail order in the adverse case of the detenu in CMP.No.2953/2022 on 07.07.2022 passed by the learned Judicial Magistrate, Vadipatti. However, on a perusal of the Booklet containing the adverse case particulars, it is seen that the detenu therein was found in possession of 200 gms of Ganja/contraband, which is a small quantity and not intermediate quantity.



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(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 [5] SCC 244**, has dealt with a situation where the Detention Order is passed without an application of mind. In case any of the reasons stated in the order of detention is non-existent or a material information is wrongly assumed, that will vitiate the Detention Order. It is in the said circumstances, this Court finds that in the instant case, the subjective satisfaction arrived at by the Detaining Authority suffers from non-application of mind. Hence, on this sole ground, the Detention Order is liable to be quashed.

(6) In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 26.05.2023 in No.43/G/IS/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.]
19.10.2023

AP



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To

- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
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Peelamedu, Coimbatore City
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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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