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HCP.No.1592/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1592/2023

Jamal Mohamed

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Petitioner

Versus

1.The Additional chief Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai-600 009.

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

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

4.The State rep.by
Inspector of Police
N3 Muthialpet Police Station
Flower Bazar, Chennai.

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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 relating to the detention order passed by the 2nd respondent pertaining to the order made in 324/BCDFGISSSV/2023 dated 21.07.2023 in detain the detenu under 2[f] of the Tamil Nadu Act 14 of 1982 as a Drug Offender and quash the same and direct the respondent to produce the detenu Thajudeen, son of Sheik Mohammed Ali, Muslim, aged about 39 years who is detained at Central Prison, Puzhal at Chennai before this Court and set him at liberty.

For Petitioner : Mr.T.S.Sasikumar
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, father of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 21.07.2023 slapped on his 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.
- (3)The learned counsel for the petitioner though canvassed several points before this Court, this Court is able to find some force in his submission that there is no application of mind on the part of the Detaining Authority



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in arriving at the subjective satisfaction. Learned counsel pointed out that the Detaining Authority has not relied upon any similar case to arrive at the subjective satisfaction and has merely stated that *"The sponsoring authority has stated that he came to understand that the relatives of Thiru Thajudeen are taking action to take him out on bail in N3 Muthialpet Police Station Cr.No.89/2023 by filing another bail application before the appropriate court. Hence, I infer that there is real possibility of his coming out on bail in N3 Muthialpet Police Station Cr.No.89/2023...."* This statement of the Detaining Authority without any material according to petitioner's counsel, is *ipse dixit* and suffers from non application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

(4) From a perusal of the Grounds of Detention, in particular, paragraph No.3, it is seen that the Detaining Authority has arrived at the subjective satisfaction that the detenu would be coming out on bail by filing bail application before the appropriate Court by recording the fact that the detenu is taking steps to file the bail application through his relative.



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However, it is to be pointed out that this statement of the Detaining Authority is not based on any materials and there is no reference to any similar cases to arrive at such subjective satisfaction. Further, the detenu in the ground case, was found in possession of commercial quantity of contraband and therefore, bail cannot be granted unless the twin conditions mentioned in Section 37 of NDPS Act, are satisfied. In such circumstances, the subjective satisfaction that the detenu is likely to be released on bail in the ground case suffers from non-application of mind.

(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 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



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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 case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.



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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) The second contention raised by the learned counsel for the petitioner is the delay in considering the representation of the detenu, dated 10.08.2023. According to the learned counsel for the petitioner, the representation dated 10.08.2023, was received by the Government on 14.08.2023 ; and though the file has been dealt with by the Deputy Secretary on the same day, i.e., on 14.08.2023, the Minister concerned dealt with the file only on 21.08.2023 and the Rejection Letter prepared on 21.08.2023 was sent to the detenu on the same day. It is the further submission of the learned counsel that this four days inordinate delay in considering the representation remains unexplained and the same vitiates the detention order. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***Rajammal vs. State of Tamil Nadu, reported in (1999) 1 SCC 417.***



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(7)As per the submission of the learned counsel for the petitioner and on perusal of the records, we find that, the representation of the detenu, dated 10.08.2023, which was received by the Government on 14.08.2023, was dealt with by the Minister concerned only on 21.08.2023 and the Rejection Letter was prepared on the same day. Thus, we find there is a considerable delay of four days [after excluding the intervening Saturday and Sunday and Public Holiday [15.08.2023, 19.08.2023 and 20.08.2023] in considering the representation of the petitioner. This inordinate delay in considering the detenu's representation remain unexplained.

(8)It is trite law that the representation should be very expeditiously considered and disposed of with a sense of urgency and without avoidable delay. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. From the records produced, we find that no acceptable explanation has been offered for the inordinate delay. Therefore, we have to hold that the delay has vitiated further detention of the detenu.



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(9) In the judgment of the Hon'ble Supreme Court in ***Rajammal's case*** (cited *supra*), it has been held as follows:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be " in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

(10) As per the dictum laid down by the Supreme Court in above cited ***Rajammal's case***, number of days of delay is immaterial and what is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here the inordinate delay of three days, has not been properly explained at all.

(11) Further, in a recent decision in **Ummu Sabeena vs. State of Kerala - 2011 STPL (Web) 999 SC**, the Hon'ble Supreme Court has held that the history of personal liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22(5) of the Constitution of India clearly shows the concern of the makers



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of the Constitution that the representation, made on behalf of the detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

(12) In the light of the above fact and law, we have no hesitation in quashing the order of detention on the ground of delay on the part of the Government in disposing of the representation of the detenu also.

(13) Accordingly, the detention order passed by the 2nd respondent dated 21.07.2023 in No.324/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.]
14.12.2023

AP
Internet : Yes



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To

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- 2.The Commissioner of Police
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- 4.The Inspector of Police
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Flower Bazar, Chennai.
- 5.The Public Prosecutor
High Court, Madras.



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AND
SUNDER MOHAN, J.,

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