



HCP.No.1611/2023

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.1611/2023

M.Gnana Deepa

Versus

.. Petitioner

- 1.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St George,
Chennai 600 009.
- 2.The Commissioner of Police/Detaining Authority
Coimbatore City, Coimbatore District.
- 3.The Superintendent of Prison
Central Prison, Coimbatore
Coimbatore District.
- 4.State rep.by its
The Inspector of Police
Cyber Crime Police Station
Coimbatore District.

.. 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 entire records relating to the petitioner's husband detention under section 2[bb] of Tamil Nadu Act 14 of 1982 vide detention order dated 01.07.2023 on the file of the 2nd respondent herein made in proceedings Memo C.No.53/G/IS/2023 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely P.Lawrence Raj son of Pushparaj, aged 28 years before this Court and set the petitioner's husband at liberty from detention now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.E.Raj Thilak,APP
assisted by Mr.Aravind.C

ORDER

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

- (1)The petitioner, wife of the detenu has come forward with this petition challenging the detention order passed by the 2nd respondent dated 01.07.2023 slapped on her husband, branding him as "Cyber Law 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)Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the Detaining Authority had arrived at the



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subjective satisfaction that the detenu is likely to be released on bail in the adverse cases and in the ground case by relying upon the bail granted to an accused in the similar case in Crime No.84/2017. However, the offences in the ground case in Crime No.55/2023 are not similar as that of the similar case.

(4) On a perusal of the Grounds of Detention, it is seen that the Detaining Authority had relied upon the order of bail passed in similar case in Crime No.84/2017 in CMP.No.45932/2022 dated 28.12.2022 by the learned Judicial Magistrate No.IV, Coimbatore, to arrive at the subjective satisfaction that the detenu is likely to be released on bail in the adverse cases and in the ground case. However, the offences in the similar case and ground case are not same or similar, so as to arrive at the subjective satisfaction. In the similar case, the accused therein was charged for the offences u/s.120[B], 419, 471, 420 IPC and under Sections 66C, 66D of the Information Technology Act, 2000. Whereas, in the ground case, the detenu was charged for the offences u/s.419, 420 of IPC and u/s.66D of the Information Technology Act. It is in the said circumstances, this Court finds that the subjective satisfaction arrived at by the Detaining



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Authority that the detenu is likely to be released on bail in the ground case, suffers from non-application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

(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 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:-



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"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.

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



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sustained."

(6) The second contention raised by the learned counsel for the petitioner is the delay in considering the representation of the detenu, dated 19.07.2023. According to the learned counsel for the petitioner, the representation dated 19.07.2023, was received by the Government on 24.07.2023 ; and though the file has been dealt with by the Deputy Secretary on the same day, i.e., on 24.07.2023, the Minister concerned dealt with the file only on 28.07.2023 and the Rejection Letter prepared on 31.07.2023 was sent to the detenu on 01.08.2023. It is the further submission of the learned counsel that this three 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.***

(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 19.07.2023, which was received by the Government on 24.07.2023, was dealt with by the Minister concerned only on 28.08.2023 and the



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Rejection Letter was prepared on 31.08.2023. Thus, we find there is a considerable delay of three days 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.

(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



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should be considered and disposed of at the earliest."

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(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 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 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.

(13)Accordingly, the Habeas Corpus Petition is allowed and the detention



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order passed by the 2nd respondent dated 01.07.2023 in C.No.53/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.]
14.12.2023

AP
Internet: Yes



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Home, Prohibition and Excise Department
Secretariat, Fort St George,
Chennai 600 009.
- 2.The Commissioner of Police/Detaining Authority
Coimbatore City, Coimbatore District.
- 3.The Superintendent of Prison
Central Prison, Coimbatore
Coimbatore District.
- 4.The Inspector of Police
Cyber Crime Police Station
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- 5.The Public Prosecutor
High Court, Madras.



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