



H.C.P.No.1651 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1651 of 2023

S.Meenakshi

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.

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

3.The Inspector of Police,
F-1, Chintadripet Police Station,
Chennai.

4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.

... Respondents



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Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the records in No.BCDFGISSSV No.228/2023, dated 12.06.2023, on the file of second respondent herein and set aside the same as illegal and produce the detenu Vicky @ Vignesh, Son of Sekar, aged 21 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Aravind C.

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

The petitioner, mother of the detenu Vicky @ Vignesh, Son of Sekar, aged 21 years, has come forward with this petition challenging the detention order passed by the 2nd respondent, dated 12.06.2023 slapped on her son, branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].



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WEB COPY 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 focussed much on the point that the detention order is liable to be quashed on the ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail by relying upon the bail order granted to the accused in a similar case, suffers from non-application of mind, as the accused in the similar case was granted bail on the ground that he was inside jail for more than 61 days.

4. In paragraph No.4 of the Grounds of Detention, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in the ground case, since, in a similar case, bail was granted to the accused therein, by relying upon an order passed by the Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, in



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CrI.M.P.No.2822 of 2021, dated 20.10.2021. On a perusal of page No.168 of the Booklet, this Court finds that, in the similar case relied upon by the Detaining Authority in CrI.M.P.No.2822 of 2021, dated 20.10.2021, the accused therein was released on bail by recording the fact that he was in jail for more than 61 days and therefore, the accused therein was entitled to default bail u/s.167[2] of Cr.P.C., and not on merits. Therefore, it is not a similar case and the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail suffers from non-application of mind, which vitiates the detention order.

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. In the instant case, the Detaining Authority has arrived at the subjective satisfaction that the detenu is likely to be released on bail by referring to a bail order granted to an



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accused in a similar case in Crl.M.P.No.2822 of 2021. However, the said bail was granted on the ground that accused therein is entitled to statutory bail and not on merits and therefore, the subjective satisfaction of the Detaining Authority that the detenu is likely to be released on bail suffers from non-application of mind. 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:-

“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 sustained."

6. In view of the ratio laid down by the Hon'ble Supreme Court and in view of the aforesaid facts, this Court is of the view that the detention order is vitiated and the same is liable to be quashed.

7. Accordingly, the detention order passed by the 2nd respondent in No.BCDFGISSSV No.228/2023, dated 12.06.2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu Vicky @ Vignesh, Son of Sekar, aged 21 years, is directed to be set at liberty forthwith unless he is



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required in connection with any other case.

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(S.S.S.R., J.) (S.M., J.)
15.11.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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- 2.The Commissioner of Police,
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Office of the Commissioner of Police,
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- 3.The Inspector of Police,
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Chennai.
- 4.The Superintendent of Prison,
Central Prison-II,
Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

S.S. SUNDAR, J.
and



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SUNDER MOHAN, J.

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