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H.C.P.No.1812 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.1812 of 2023

Mala
W/o Raja Jaisingh .. Petitioner

v.

1. State of Tamil Nadu
rep. by the Additional Chief Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai 600 009

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

3. The Inspector of Police
S-7, Madipakkam Police Station
Chennai

4. The Superintendent of Prison
Central Prison-II, Puzhal
Chennai 600 066 .. Respondents



H.C.P.No.1812 of 2023

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.314/BCDFGISSSV/2023 dated 13.07.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Thiru.Sanjay Bharath @ Oolai, S/o Raja Jaisingh, aged about 24 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble court and set the petitioner's son Thiru.Sanjay Bharath @ Oolai, S/o Raja Jaisingh aged about 24 years the detenu herein at liberty.

For Petitioner :: Mr.R.Muthukumar

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 mother of the detenu, namely, Sanjay Bharath @ Oolai, aged 24 years, S/o Raja Jaisingh, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 13.07.2023 slapped on her son, branding him as 'Drug Offender' 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



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Video Pirates Act, 1982 (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 confined his argument to the point that the detaining authority has relied upon the bail order passed in CrI.M.P.No.1414 of 2021 dated 04.06.2021 by the Principal Special Court under EC & NDPS Act, Chennai in respect of the accused in similar case, which is not similar to the case on hand, as the bail was granted to the accused in similar case considering that no bad antecedent was reported against the accused therein. However, in the present case, it is admitted that there there are three adverse cases against the detenu. Therefore, the detention order is liable to be set aside on the sole ground that the subjective satisfaction of the detaining authority suffers from non-application of mind.

4. This Court perused page-179 of the booklet and is convinced with



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the statement of the learned counsel for petitioner that the bail was granted to the accused in similar case on the ground that no bad antecedent was reported against the accused therein. However, in the present case, it is admitted that the detenu is alleged to be involved in three adverse cases. This Court has held in several cases that the detention order is vitiated if there is no application of mind as to the real ground on which the bail was granted to the accused in similar case. It is also relevant to point out that 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***, has held that 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 relevant to extract paragraph Nos.10 and 11 of the said judgment of the Hon'ble Supreme Court, as follows:-

“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."

In view of the judgment of the Hon'ble Supreme Court in Rekha's case, this Court finds that the impugned detention order is liable to be quashed.



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5. Accordingly, the detention order passed by the 2nd respondent dated

13.07.2023 in BCDFGISSSV No.314/2023 is hereby set aside and the

habeas corpus petition is allowed. The detenu viz., Sanjay Bharath @ Oolai,

S/o Raja Jaisingh, aged 24 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

11.12.2023

ss

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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5. The Public Prosecutor
High Court, Madras

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