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H.C.P.No.1767 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

H.C.P.No.1767 of 2023

Mrs.Uma
W/o Babu

..

Petitioner

v.

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai 600 009

2. The Commissioner of Police
Greater Chennai, Chennai City

3. The Superintendent
Central Prison, Puzhal
Chennai 600 066

4. The Inspector of Police
PEW, Flower Bazaar Police
Chennai

..

Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Habeas Corpus, to call for the records in



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connection with the order of detention passed by the 2nd respondent dated 05.07.2023 in No.289/BCDFGISSSV/2023 against the petitioner's son Thiru.Selvam @ Citizen, Male aged about 22 years, Son of Babu, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner :: Mr.M.Illiyas

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, Selvam @ Citizen, aged 22 years, S/o Babu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 05.07.2023 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 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 submitted that the similar case bail order relied upon by the detaining authority in CrI.M.P.No.662 of 2018, is not similar to the case on hand. Referring to the fact that the accused therein was granted bail only on the ground that the co-accused were released on bail and that the investigation was almost completed. Therefore, the learned counsel submitted that the subjective satisfaction of the detaining authority suffers from non-application of mind and the same vitiates the detention order.

4. This Court, on perusal of page 197 of the booklet, finds that bail was granted to the accused in similar case recording the fact that the co-accused were released on bail and that the investigation was almost completed. Whereas the detenu in the present case is alleged to be involved in five adverse cases. It is not a case where co-accused was released on



bail. In such circumstances, the subjective satisfaction of the detaining authority that the detenu is likely to be released on bail, suffers from total non-application of mind and is a mere ipse dixit, as held by 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***, wherein it has been held as follows:-

“7. A perusal of the above statement in Para-4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that “in similar cases bails were granted by the courts”. In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the



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detention order."

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

In view of the law enunciated by the Hon'ble Supreme Court in Rekha's case, this Court is convinced 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 05.07.2023 in No.289/BCDFGISSSV/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Selvam @ Citizen, S/o Babu, aged 22 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

15.12.2023

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5. The Public Prosecutor
High Court, Madras

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