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H.C.P.No.1776 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM :

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

H.C.P.No.1776 of 2023

Vijaya
W/o Shanmugam .. Petitioner

v.

1. Government of Tamil Nadu
represented by its Secretary
Home, Prohibition and Excise (XVI) Department
Fort St.George, Chennai 600 009
2. The District Collector and District Magistrate
Ranipet District, Ranipet
3. The Superintendent of Police
Ranipet, Ranipet District
4. The Inspector of Police
Arakkonam Town Police Station
Arakkonam
5. The Superintendent of Jail
Central Prison, Salem .. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, to call for the entire records in detention order B3/D.O.No.17/2023 dated 19.06.2023 on the file of the 2nd respondent herein and quash the same as illegal and consequently direct the respondents herein to produce the body and person of the detenu by name Shoban @ Shoban Babu, Son of late Jagadesan aged about 23 years before this Hon'ble Court and set him at liberty from the detention, now confined at Central Prison, Salem at once.

For Petitioner :: Mr.A.Vijayasankar

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 grandmother of the detenu, namely, Shoban, aged 23 years, S/o Jagadesan, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 19.06.2023 slapped on her grandson, 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).



H.C.P.No.1776 of 2023

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, referring to paragraph-5 of the grounds of detention, submitted that the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the detaining authority suffers from non-application of mind and is a mere ipse dixit in the absence of any material.

4. This Court finds that in paragraph-5 of the grounds of detention, the detaining authority has stated that the detenu had filed bail application before this Court in the ground case. However, the subjective satisfaction of the detaining authority was by stating that “bails are being granted by courts in such cases”. There is no reference to any similar case or any material which was relied upon by the detaining authority for passing the order of detention. In the said circumstances, the subjective satisfaction is not based on any material and it is a mere ipse dixit of the detaining authority to



H.C.P.No.1776 of 2023

observe that the detenu is likely to be released on bail. Therefore, this Court finds that the subjective satisfaction of the detaining authority suffers from non-application of mind, 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 detention order.”



H.C.P.No.1776 of 2023

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, the detention order is liable to be quashed.

5. Accordingly, the detention order passed by the 2nd respondent dated 19.06.2023 in B3/D.O.No.17/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Shoban, S/o Jagadesan, aged 23 years,



H.C.P.No.1776 of 2023

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

23.11.2023

SS

To

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