



HCP.No.2216/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2216/2023

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Petitioner

Versus

- 1.Secretary to the Government
Department of Home, Prohibition and Excise
Secretariat, Fort St George, Chennai-9.
- 2.The Commissioner of Police/Detaining Authority
O/o.The Commissioner of Police
Tiruppur City.
- 3.The Superintendent
Central Prison, Coimbatore.
- 4.The Inspector of Police
Prohibition Enforcement Wing
Tiruppur City,
Tiruppur.

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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 records in connection with the detention passed by the 2nd respondent dated 10.03.2023 in C.No.10/DO/IS/Tiruppur City/2023 against the petitioner's son / detenu Altaf male aged 19 years son of Hakeem, who is confined at Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Mohammed Feroz
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

- (1)The petitioner, mother of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 10.03.2023 slapped on her son, branding him as "Drug 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.



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(3) Though several points have been raised by the petitioner in the Grounds of Detention, the learned counsel for the petitioner made the following three-fold submissions:-

- ➔ The detenu was furnished with a Booklet in the English and Tamil Version. However, the detenu is the native of Kerala and he knows only Malayalam. Therefore, the documents which were relied upon by the Detaining Authority to arrive at the subjective satisfaction about the possibility of the detenu's release on bail is not furnished to him in the language known to the detenu.
- ➔ There is no application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction. Learned counsel pointed out that the Detaining Authority though has specifically mentioned about the real possibility of the detenu coming out on bail in the ground case, he has not relied upon any similar case to arrive at the subjective satisfaction. He has merely stated "*...I am aware that he has not moved any bail petition in the above case in any court till this date. However, I am also aware that there is a "real possibility" of coming out on bail in future by*



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filing bail petition before the concerned Court in future....". This statement of the Detaining Authority without any material, is mere ipse dixit not supported by any material and suffers from non application of mind.

- The impugned order of detention in the petition, is vitiated on the ground of delay in considering the representation of the detenu, dated 19.04.2023. According to the learned counsel for the petitioner, though the representation dated 19.04.2023, was received by the Government on 20.04.2023 ; and though the file has been dealt with by the Deputy Secretary on 21.04.2023, the Minister concerned dealt with the file only on 27.04.2023 and the Rejection Letter prepared on the same day, was sent to the detenu on 28.04.2023. It is the further submission of the learned counsel that this 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.***



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(4) It is seen that in the Booklet furnished to the detenu, the English version and the Tamil Version of all the documents relied on by the Detaining Authority, has been furnished. However, the detenu who is a Malayali, has not been furnished with the documents, in the vernacular language known to him, namely, Malayalam. This non furnishing of the vital documents in vernacular language would deprive the detenu of making effective representation to the authorities against the order of detention.

(5) In this context, it is useful to refer to the judgment of the Hon'ble Supreme Court in ***Powanammal Vs. State of Tamil Nadu*** reported in ***(1999) 2 SCC 413***. The Hon'ble Supreme Court had occasion to deal with similar situation where in the Grounds of Detention referred to an order remanding the detenu therein to judicial custody was in English language. Since the tamil version of the document was not supplied to the detenue therein, a specific issue was raised by the Hon'ble Supreme Court whether failure to supply tamil version of the remand order passed in English, a language not known to the detenu therein, would vitiate the detenu's further detention. The Hon'ble Supreme Court, after discussing the safeguards embodied in Article 22[5] of the Constitution, observed



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that the detenu should be afforded an opportunity of making representation effectively against the Detention Order and that, the failure to supply every material in the language which can be understood by the detenu, is imperative. In the said context, the Hon'ble Supreme Court has held in Paragraphs 9 and 16 as follows:-

"9.However, this Court has maintained a distinction between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention. Whereas the non-supply of a copy of the document relied upon in the grounds of detention has been held to be fatal to continued detention, the detenu need not show that any prejudice is caused to him. This is because the non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. But it would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of document has to be supported by prejudice caused to him in



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making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language.

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16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed."

(6)With regard to the second contention raised by the learned counsel for the petitioner, from a perusal of the Grounds of Detention, in particular, paragraph No.5, it is seen that the subjective satisfaction arrived by the Detaining Authority, with regard to the real possibility of the detenu coming out on bail is not based on any materials and there is no reference to any similar cases to arrive at such subjective satisfaction. This subjective satisfaction of the Detaining Authority is mere *ipse dixit* and suffers from non-application of mind.



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(7)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 no details had been given about the alleged similar cases in which bail was allegedly granted by the Court concerned, and 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:-

"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



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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."

(8)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 19.04.2023, which was received by the Government on 20.04.2023, was dealt with by the Minister concerned only on 27.04.2023 and the Rejection Letter was prepared on the next day. Thus, we find there is a considerable delay of four days [after excluding the intervening Saturday and Sunday [22.04.2023 and 23.04.2023] in considering the



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representation of the petitioner. This inordinate delay in considering the detenu's representation remain unexplained.

(9)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.

(10)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 should be considered and disposed of at the earliest."



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(11)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 from 21.04.2023 to 27.04.2023, has not been properly explained at all.

(12)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. Thus, the detention order is vitiated on the ground of non furnishing of the vital documents in the vernacular language as well as non-application of mind and hence, the same is liable to be quashed.

(13)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



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order is liable to be quashed.

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(14) Accordingly, the detention order passed by the 2nd respondent dated 10.03.2023 in C.No.10/DO/IS/Tiruppur City/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.

[SSSRJ] [SMJ]
21.12.2023

AP
Internet: Yes



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To

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5. The Public Prosecutor
High Court, Madras.



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S.S.SUNDAR, J.,

AND

SUNDER MOHAN, J.,

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