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H.C.P.No.1919 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM :

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

H.C.P.No.1919 of 2023

K.Sunitha Kumari .. Petitioner

v.

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

2. The Commissioner of Police
Avadi City
Chennai 600 054

3. The Inspector of Police
Red Hills – PEW
Avadi City PEW

4. The Superintendent
Central Prison, Puzhal
Chennai District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,



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praying for issuance of a Writ of Habeas Corpus, to produce the body of the detenu namely (Sonaj S Sabu, aged about 22 years, Son of Sunitha Kumari) before this Hon'ble Court and set him at liberty forthwith, by calling for the records pertaining to the detention order 29/BCDFGISSSV/2023 dated 09.02.2023 and quash the same and direct the respondents to produce the detenu namely Sonaj S Sabu, aged about 22 years, Son of Sunitha Kumari, who is detained at Central Prison, Puzhal before this Hon'ble Court and set him at liberty.

For Petitioner :: Mr.K.Madhu

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, Sonaj S Sabu, aged 22 years, S/o Sunithakumari, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 09.02.2023 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



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Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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 petitioner confined his arguments to the following two points:-

- (i) The detaining authority has relied upon the order of bail granted to the accused in CrI.M.P.No.1842 of 2020 in the grounds of detention, which is not similar to the case on hand, as the bail was granted to the accused in that case on the ground that he was found in possession of intermediate quantity. However, the detenu in the present case is found to be in possession of commercial quantity.
- (ii) Admittedly, the mother tongue of the detenu is Malayalam and he is not conversant with Tamil. The index of contents in the booklet is only in Tamil and not in Malayalam. Therefore, serious prejudice is caused to the detenu to make his effective representation.



4. This Court finds that the learned Principal Special Judge, Chennai in CrI.M.P.No.1842 of 2020 has granted bail to the accused in similar case by recording the fact that the accused therein was found in possession of intermediate quantity. Admittedly, the detenu in the present case is found to be in possession of commercial quantity. 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



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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."

Therefore, this Court finds that the subjective satisfaction of the detaining authority suffers from non-application of mind.

5. Similarly, as rightly urged by the learned counsel for the petitioner, the detenu has been deprived of an opportunity to make an effective representation for the failure to furnish the translated version of the index of



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contents in Malayalam, as held by the Hon'ble Supreme Court in the case of

Powanammal Vs. State of Tamil Nadu, (1999) 2 SCC 413 holding that

what applies to a document, would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu. In the said judgment, the Hon'ble Supreme Court has further held as follows:-

"6.The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

.....

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."

Therefore, this Court, following the judgments of the Hon'ble Supreme Court in *Rekha* and *Powanammal* cases, is convinced that the grounds



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raised by the petitioner are sufficient to hold that the detention order is vitiated and is liable to be quashed.

6. Accordingly, the detention order passed by the 2nd respondent dated 09.02.2023 in No.29/BCDFGISSSV/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Sonaj S Sabu, S/o Sunitha Kumari, 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

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SS

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