



HCP.No.1861/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.11.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1861/2023

Mageshwari

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Petitioner

Versus

1.State of Tamil Nadu rep.by its
Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.

2.The District Collector & District Magistrate
Cuddalore, Cuddalore District.

3.The Superintendent of Police
Cuddalore, Cuddalore-1.

4.The Superintendent of Police
Central Prison, Cuddalore-4.

5.The Inspector of Police
Thiruppapuliyur Police Station
Cuddalore District.

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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 entire records pertaining to the detention order passed by the 2nd respondent in C3/DO/31/2023 dated 22.06.2023 and set aside the same and direct the respondents to produce the petitioner's brother namely Thangapandi @ Ezhumalai, son of Elango, aged about 28 years, who is now confined in Central Prison at Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.M.Vijaya Ragavan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.Aravind.C

ORDER

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

- (1)The petitioner, sister of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 22.06.2023 slapped on her brother, branding him as "Goonda" 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.
- (3)The learned counsel for the petitioner though canvassed several points before this Court, this Court is able to find some force in his submission that there is no application of mind on the part of the Detaining Authority



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in arriving at the subjective satisfaction that the detenu is likely to be released on bail in the ground case by referring to an order passed in the similar case in CrI.MP.No.7421/2022 by the learned District and Sessions Judge, Cuddalore, on 24.11.2022. Learned counsel pointed out that the learned Judge while granting bail to the accused in the similar case, had not referred to any previous cases against the accused therein. Whereas, the detenu in the present case has two previous cases. This aspect was not considered by the Detaining Authority while arriving at the subjective satisfaction that the detenu is likely to be released on bail in the ground case and hence, the learned counsel submitted that the subjective satisfaction of the Detaining Authority suffers from non application of mind. Hence, on the above ground, the Detention Order is liable to be quashed.

(4) From a perusal of the Booklet, in particular, page No.93, it is seen that the Detaining Authority has relied upon the bail order in CrI.MP.No.7421/2022 granted to the accused therein, to arrive at the subjective satisfaction that the detenu herein is likely to be released on bail in the ground case. However, it is to be pointed out that there is no



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reference to any previous cases against the accused therein by the learned Judge while granting bail in CrI.MP.No.7421/2022. Whereas, the detenu herein has got five previous cases. The Detaining Authority has not taken into consideration this vital aspect, while arriving at the subjective satisfaction. Hence, the subjective satisfaction of the Detaining Authority suffers from non-application of mind.

(5)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 it is stated that in the grounds of detention that relatives of detenu are taking action to take him on bail in the criminal case in which the detenu was in remand and that in similar cases, bail was granted by Courts. Since no details had been given about the alleged similar cases in which bail was allegedly granted by the Court concerned, 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



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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 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



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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."

(6)The learned counsel for the petitioner also submitted that the Seizure Mahazar pertaining to the 1st adverse case in Crime No.41/2022 found in pages No.35 to 37 has not been translated in the vernacular version. This Court also affirmed the said submission on perusal of the Booklet. Further, the said pages are not legible. It is in the said circumstances, this Court finds that serious prejudice is caused to the detenu on account of improper translation in making effective representation against the Detention Order and that the Detention Order passed by the Detaining Authority is vitiated.

(7)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



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the detenu 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 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 in SCC journal} 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



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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 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."*

(8) In view of the ratio laid down by the Hon'ble Supreme Court and in view



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of the aforesaid facts, this Court is of the view that the detention order is liable to be quashed.

(9) Accordingly, the detention order passed by the 2nd respondent dated 22.06.2023 in Memo No.C3/D.O/31/2023 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.

[S.S.S.R., J.] [S.M, J.]
22.11.2023

AP
Internet : Yes



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- To
- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Fort St George, Chennai-600 009.
 - 2.The District Collector & District Magistrate
Cuddalore, Cuddalore District.
 - 3.The Superintendent of Police
Cuddalore, Cuddalore-1.
 - 4.The Superintendent of Police
Central Prison, Cuddalore-4.
 - 5.The Inspector of Police
Thiruppapuliur Police Station
Cuddalore District.
 - 6.The Public Prosecutor
High Court, Madras.



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S.S.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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