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HCP.No.1904/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1904/2023

Ajithkumar @ Surulimuthu

... Petitioner

Vs.

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

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

3.The Superintendent of Prison
Central Prison, Coimbatore
Coimbatore District.

4.State rep.by its
The Inspector of Police
PEW Tiruppur, Tiruppur District.

... Respondents

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



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relating to the petitioner under Tamil Nadu Act 14 of 1982 vide detention order dated 28.06.2023 on the file of the 2nd respondent herein made in proceedings Memo Cr.MP.No.25/Drug Offender/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner namely Ajithkumar @ Surulimuthu, son of [late] Raja, aged 28 years before this Court and set the petitioner at liberty from detention, now the petitioner detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

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, detenu herein, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 14.06.2023 slapped on him, 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 learned counsel for the petitioner, the detention order is liable to be quashed on the ground that the subjective satisfaction of the Detaining Authority regarding the possibility of the detenu coming out on bail by relying upon the bail order granted to the accused in a similar case, suffers from non-application of mind.

(4) It is seen that in paragraph No.5 of the Grounds of Detention, the Detaining Authority had observed that though the detenu was granted bail in the ground case by the Special Court for EC Act Cases, Coimbatore, on 31.05.2023 in CrI.MP.No.1636/2023, he was still under judicial custody on the date of passing of the Detention Order since the detenu had not executed the sureties. The Detaining Authority also recorded the fact that the remand period was extended upto 03.07.2023. However, the Detaining Authority has not recorded any statement as to the subjective satisfaction regarding the possibility of the detenu coming out on bail in the ground case. Hence, the order of detention is vitiated on the ground of total non application of mind on the part of the Detaining Authority.



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(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 dealt with a situation where the Detention Order is passed without an application of mind. 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. In the instant case, the detenu was released on bail in the ground case by the Special Court for EC Act Cases, Coimbatore, in CrI.MP.No.1636/2023 on 31.05.2023. However, he was still under judicial custody as on the date of passing of Detention Order as he has not executed sureties. The Detaining Authority also not recorded the factum of possibility of the detenu coming out on bail in the ground case by executing sureties. This indicates non-application of mind on the part of the Detaining Authority. 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:-



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"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 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



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sustained."

(6) In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment and in view aforesaid reason, this Court is of the view that the detention order is liable to be quashed.

(7) Accordingly, the detention order passed by the 2nd respondent dated 28.06.2023 in Cr.MP.No.25/Drug Offender2023, 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]
28.11.2023

AP
Internet : Yes



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To

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- 3.The Superintendent of Prison
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- 4.The Inspector of Police
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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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