



WEB COPY



HCP.No.1993 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.1993 of 2023

Anjali .. Petitioner

Vs.

1.The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Chennai - 119.

3.The Inspector of Police,
T-3 Pallavaram Police Station,
Chennai.

4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66. .. Respondents

Petition filed under Article 226 of The Constitution of India
praying for a Writ of Habeas Corpus to call for the entire records
connected with the order of the second respondent herein in
BCDFGISSSV No.38/2023 dated 29.08.2023 passed against the
petitioner's son the detenu namely K.Iyyappan, son of Kuppan,



HCP.No.1993 of 2023

aged about 23 years as a Goonda who is confined at Central Prison, Puzhal, Chennai and set aside the same, consequently direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.D.Magesh

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.**]

The petitioner, mother of the detenu K.Iyyappan, has come forward with this petition challenging the detention order passed by the second respondent dated 29.08.2023 slapped on her son, branding him as "Goonda" 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].

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.



HCP.No.1993 of 2023

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***.

5. Insofar as the first ground raised by the learned counsel for the petitioner is concerned, this Court, upon examination of the records, is unable to discard the said contention of the learned counsel for the petitioner. From a perusal of the Booklet, it is seen that the detaining authority has relied upon the bail order in CrI.O.P.No.13451/2012 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 bail was granted in the said case after recording the fact that charge sheet has already been filed. 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.

6. 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



HCP.No.1993 of 2023

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 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*



HCP.No.1993 of 2023

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."*

7. Insofar as the second ground urged by the learned counsel for the petitioner is concerned, as per the submission of the learned counsel for the petitioner and on perusal of the records, we find that the representation of the petitioner is dated 03.10.2023, which was received by the Government on 05.10.2023 and further, the Minister concerned had dealt with the file of the detenu only on 11.10.2023 and the Rejection Letter was prepared on 11.10.2023. Thus, we find there is a considerable delay of 3 days in considering the representation of the petitioner. This delay of 3 days in considering the detenu's representation remains unexplained.



HCP.No.1993 of 2023

8. 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 delay of 3 days. Therefore, we have to hold that the delay has vitiated further detention of the detenu.

9. 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."

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



HCP.No.1993 of 2023

is to be considered is whether the delay caused has been properly explained by the authorities concerned. But, here the inordinate delay of 3 days has not been properly explained at all.

10. 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.

11. 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 order is liable to be quashed.

12. In view of the aforesaid reason, the detention order passed by the second respondent dated 29.08.2023 in BCDFGISSSV No.38/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., K.Iyyappan, S/o. Kuppan, aged about 23



HCP.No.1993 of 2023

years, 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.]
22.12.2023

Index:Yes/No
Neutral Citation:Yes/No
mmi

To

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Commissioner of Police,
Tambaram City,
Office of the Commissioner of Police,
Chennai - 119.
- 3.The Inspector of Police,
T-3 Pallavaram Police Station,
Chennai.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66.
- 5.The Public Prosecutor
High Court, Madras.



WEB COPY



HCP.No.1993 of 2023

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

mmi

H.C.P.No.1993 of 2023

22.12.2023