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H.C.P.No.1992 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM :

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

H.C.P.No.1992 of 2023

Mrs.Jenifar
W/o Vijayakumar @ Kurus .. Petitioner

v.

1. The State of Tamil Nadu
represented by its Secretary
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai 600 009
2. The Commissioner of Police, Greater Chennai
Office of the Commissioner Office (Goondas Section)
Vepery
Chennai 600 007
3. The Superintendent
Central Prison, Puzhal
Chennai 600 066
4. The Inspector of Police (L&O)
F-5, Choolaimedu Police Station
Chennai .. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order in No.213/BCDFGISSSV/2023 dated 06.06.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Mr.Vijayakumar @ Kurus, aged about 34 years, the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set petitioner's husband Mr.Vijayakumar @ Kurus, S/o Perumal, aged about 34 years, the detenu herein at liberty.

For Petitioner :: Mr.Rakesh Ayyappan S.V

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 wife of the detenu, namely, Vijayakumar @ Kurus, aged 34 years, S/o Perumal, has come forward with this petition challenging the detention order passed by the second respondent dated 06.06.2023 slapped on her husband, branding him as 'Drug Offender' under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber



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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 appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, learned counsel appearing for the petitioner brought to the notice of this Court that the detaining authority has relied upon the order passed in CrI.M.P.No.1842 of 2020, wherein the accused therein was granted bail by recording the fact that the respondent police failed to produce the properties/contraband allegedly seized from the accused therein immediately before the Court.

4. This Court perused page-317 of the booklet and is convinced with the statement of the learned counsel for the petitioner that the subjective satisfaction of the detaining authority suffers from non-application of mind, as the bail was granted to the accused in similar case on the specific ground



that the properties/contraband allegedly seized from the accused therein were not produced before the Court, which is not similar to the case on hand. 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. 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 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."

In view of the judgment of the Hon'ble Supreme Court in Rekha's case, this Court finds that the impugned order is liable to be quashed.

5. In view of the aforesaid reasons, the detention order passed by the second respondent dated 06.06.2023 in No.213/BCDFGISSSV/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz.,



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Vijayakumar @ Kurus, S/o Perumal, aged 34 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

23.11.2023

ss

To

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Home, Prohibition and Excise Department
Fort St.George
Chennai 600 009
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High Court, Madras



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