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H.C.P.No.2134 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM :

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

H.C.P.No.2134 of 2023

S.Kowsalya
W/o Senkuttuvan .. Petitioner

v.

1. The State of Tamil Nadu
represented by its Additional Chief Secretary to Government
Home, Department of Prohibition and Excise
Secretariat, Fort St.George, Chennai 600 009
2. The District Collector and District Magistrate
O/o the District Collector and District Magistrate
Chengalpattu District
3. The Superintendent of Police
Chengalpattu District, Chengalpattu
4. The Superintendent of Prison
Central Prison-II, Puzhal, Chennai
5. The Inspector of Police
Madurantakam Police Station
Chengalpattu District .. 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, to call for the records in CPT No.06/2023 dated 18.01.2023, on the file of second respondent herein and set aside the same as illegal and produce the detenu Senguttuvan @ Sengodan, Son of Arunachalam, aged 32 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner :: Mr.Ilayaraja Kandasamy

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, Senguttuvan @ Sengodan, aged 32 years, S/o Arunachalam, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 18.01.2023 slapped on her husband, 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 Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).



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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 the petitioner submitted that the remand extension order, which was relied upon by the detaining authority, was not translated and the translated version is not furnished to the detenu. In such circumstances, the learned counsel pointed out that the detenu is deprived of his valuable right to make an effective representation. It was also pointed out by the learned counsel that the bail order in similar case relied upon by the detaining authority relating to the detenu is for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, 379 IPC & 102 Cr.P.C. Whereas the detenu has been charged for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act in the ground case. Therefore, the detention order is liable to be quashed on the sole ground that the subjective satisfaction of the detaining authority regarding the possibility of the detenu coming out on bail in the ground case, suffers from non-application of mind.



4. On perusal of the records, this Court is convinced that the bail order in CrI.M.P.No.620 of 2020 dated 13.02.2020 relied upon by the detaining authority relating to the detenu is for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act, 379 IPC & 102 Cr.P.C concerning the adverse case. Whereas the detenu has been charged for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act in the ground case. The detenu has also not moved any bail application in the ground case on the date when the detention order came to be passed. Therefore, the subjective satisfaction of the detaining authority regarding the possibility of the detenu coming out on bail in the ground case, suffers from non-application of mind, as enunciated by the Hon'ble Supreme Court in the case of ***Rekha Vs. State of Tamil Nadu through Secretary to Government and another, (2011) 5 SCC 244***, holding 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 No.27 of the said judgment of the Hon'ble Supreme Court hereunder:-

“27.In our opinion, there is a real possibility of release of a person on bail who is already in custody



provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

Further, the non-supply of the translated version of the remand extension order has deprived the valuable right of the detenu to make an effective representation.

5. In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 18.01.2023 in CPT.No.06/2023 is hereby set aside and the habeas corpus petition is allowed. The detenu viz., Senguttuvan @



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Sengodan, S/o Arunachalam, aged 32 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

20.12.2023

SS

To

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