



HCP.No.2086/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2023

CORAM

THE HONOURABLE MR . JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2086/2023

M.Kalyani

Versus

Petitioner

1.State of Tamil Nadu rep.by
The Secretary to Government
[Home] Prohibition and Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Chennai Police,
O/o.The Commissioner of Police
[Goondas Section], Vepery
Chennai 600 007.

3.The Inspector of Police [Law & Order]
C3 Elephant Gate Police Station
Chennai.

4.The Superintendent of Prison
Central Prison, Puzhal, Chennai.

.. 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 relating to the impugned order of detention passed by the 2nd respondent in BCDFGISSSV No.360/2023 dated 16.08.2023 and set aside the same and consequently direct the respondents to produce the detenu N.Venkatesan, aged about 40 years petitioner's son now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Santhanam

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, mother of the detenu, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 16.08.2023 slapped on her son, 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.



HCP.No.2086/2023

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(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 in arriving at the subjective satisfaction. Learned counsel pointed out that the inference that there is imminent possibility of the detenu coming out on bail in the ground case is immaterial as he has not relied upon any similar case to arrive at the subjective satisfaction. He has merely stated "*.. he has moved a bail application for C2 Elephant Gate Police Station Crime No.98/2023 before the Principal Sessions Special Court for Narcotic Drugs and Psychotropic Substances Act Cases, in Crl.MP.No.5763/2023 and the same is pending. Hence, I infer that it is very likely of his coming out on bail in C2 Elephant Gate Police Station Crime No.98/2023.....*". This statement of the Detaining Authority without any material, which is mere *ipse dixit* and not supported by any material 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 Grounds of Detention, in particular, paragraph



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No.3, it is seen that the Detaining Authority has inferred about the imminent possibility of the detenu being released on bail without reference to any order or material. Merely because the detenu has filed a bail application, that cannot lead to a presumption that there is a real possibility of the detenu being released on bail. Unless there are materials to show that the detenu is likely to be released on bail and such release will be prejudice to the maintenance of public health and public order, the Detaining Authority may pass the detention order. However, in the absence of any material to justify his conclusion, this Court finds that the subjective satisfaction is mere *ipse dixit* and 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



HCP.No.2086/2023

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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 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



HCP.No.2086/2023

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."

(6) 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.

(7) Accordingly, the detention order passed by the 2nd respondent dated 16.08.2023 in BCDFGISSSV No.360/2023 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.]
21.12.2023



HCP.No.2086/2023

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HCP.No.2086/2023

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- 6.The Public Prosecutor
High Court, Madras.



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HCP.No.2086/2023

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

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