



HCP.No.2554 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2554 of 2023

Balasubramaniam

... Petitioner

Vs.

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

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

3.The Superintendent of Police,
Cuddalore District, Cuddalore.

4.The Superintendent of Prison,
Central Prison, Cuddalore - 4.

5.The Inspector of Police,
Vridhachalam PEW Police Station,
Cuddalore District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Habeas Corpus, calling for the records in connection with



HCP.No.2554 of 2023

the order of detention passed by the second respondent dated 06.10.2023 in C3/D.O./59/2023 against the petitioner's son Mister Teenupaiya @ Teenupaiya, aged about 22 years, S/o.Balasubramaniyan, who is confined at Central Prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C. Aravind

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

The petitioner herein, who is the father of the detenu Mister Teenupaiya @ Teenupaiya, aged 22 years, has come forward with this petition challenging the detention order passed by the second respondent dated 06.10.2023, slapped on his son, branding him as "Drug Offender" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas,



HCP.No.2554 of 2023

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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, as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds are raised in the petition, the learned counsel for the petitioner submitted that the order of detention is vitiated on the ground of non-application of mind. The Detaining Authority has relied upon a similar case wherein, bail was granted to the accused therein. However, in the ground case, the detenu was found in possession of intermediate quantity of ganja, whereas, the accused in the similar case was found in possession of small quantity and hence, the said case cannot be cited as a similar case by the Detaining Authority to arrive at the subjective satisfaction.

4. A perusal of the Grounds of Detention reveals that the detenu was found in possession of Ganja in bulk which is a intermediate



HCP.No.2554 of 2023

quantity. However, Detaining Authority had relied upon the bail order in a similar case in CrI.MP.No.1041/2021 passed by the Judicial Magistrate No.III, Cuddalore, under NDPS Act. However, on a perusal of the Booklet containing the similar case particulars, it is seen that the accused therein was found in possession of small quantity and not intermediate quantity.

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. 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:-

“10.In our opinion, if details are given by the respondent authority about the alleged bail orders



HCP.No.2554 of 2023

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 sustained.”



HCP.No.2554 of 2023

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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. Hence, for the aforesaid reasons, the detention order passed by the second respondent on 06.10.2023 in C3/D.O./59/2023, is hereby set aside and the Habeas Corpus Petition is allowed. The detenu viz., Mister Teenupaiya @ Teenupaiya, aged 22 years, S/o.Balasubramaniam, is directed to be set at liberty forthwith, unless he is required in connection with any other case.

[M.S.R., J]

[S.M., J]

12.02.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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HCP.No.2554 of 2023

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To

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- 6.The Public Prosecutor,
High Court, Madras.



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HCP.No.2554 of 2023

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