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HCP.No.1658/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.1658/2023

Jothi

Vs.

... Petitioner

- 1.The Additional Chief Secretary to Government
Home, Prohibition & Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Magistrate and District Collector
Tiruvallur District, Tiruvallur 602 001.
- 3.The Superintendent of Police
Tiruvallur District, Tiruvallur 602 001.
- 4.The Superintendent of Prison
Central Prison – II, Puzhal
Chennai 600 066.
- 5.The Inspector of Police
PEW-R.K.Pet Police Station
Tiruvallur 631 301.

... 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 connected with the detention order of the 2nd respondent in BCDFGISSSV No.15/2023 dated 31.05.2023 and quash the same in direct the respondents to produce the body and person of detenu namely Jilo @ Sudhakar, S/o.Murugan, aged about 25 years detained in Central Prison-II, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner	: Mr.B.M.Santharam
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, grandmother of the detenu herein, Jilo @ Sudhakar, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 31.05.2023 slapped on her grandson, 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.



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(3) Though several points have been raised by the learned counsel for the petitioner, the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority.

(4) It is seen that in paragraph No.7 of the Grounds of Detention, the Detaining Authority had observed that though the detenu was granted bail in the ground case by the Special Court under EC & NDPS Act Cases, Chennai, on 10.05.2023 in CrI.MP.No.2960/2023, he was still under judicial custody on the date of passing of the Detention Order since the detenu had not executed the sureties. The Detaining Authority also recorded the fact that the remand period was extended upto 31.05.2023. However, the Detaining Authority has not recorded any statement as to the subjective satisfaction regarding the possibility of the detenu coming out on bail in the ground case. Hence, the order of detention is vitiated on the ground of total non application of mind on the part of the Detaining Authority.

(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



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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. In the instant case, the detenu was released on bail in the ground case by the Special Court for EC&NDPS Act Cases, Chennai, in CrI.MP.No.2960/2023 on 10.05.2023. However, he was still under judicial custody as on the date of passing of Detention Order as he has not executed sureties. The Detaining Authority also not recorded the factum of possibility of the detenu coming out on bail in the ground case by executing sureties. This indicates non-application of mind on the part of the Detaining Authority. 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



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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."

(6) Further, it is also the submission of the learned counsel for the petitioner that there is a delay in passing the order of detention. In the present case, though the detenu was arrested on 04.03.2023, the Detention Order was passed only on 31.05.2023.



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(7)The Hon'ble Supreme Court in the case of ***Sushantha Kumar Banik Vs.***

State of Tripura and Others reported in ***AIR 2022 SC 4715***, has dealt

with similar situation and has held in paragraph No.21 as follows:-

"In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same."

(8)The Hon'ble Supreme Court was persuaded to allow the Appeal filed

before it mainly on the ground that delay in passing the Order of Detention from the date of the proposal would snap the "live and proximate link" between prejudicial activities and the purpose of detention. Therefore, failure on the part of the Detaining Authority in explaining such delay as in the present case also is a valid ground for



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quashing the Detention Order.

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(9) In view of the aforesaid reasons, the detention order passed by the 2nd respondent dated 31.05.2023 in BCDFGISSSV No.15/2023, 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.

[SSSRJ] [SMJ]
31.10.2023

AP
Internet : Yes



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To

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



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S.S. SUNDAR, J.,
and
SUNDER MOHAN, J.,

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