



H.C.P.No.42 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.42 of 2023

Dhanalakshmi

.. Petitioner/
Mother of the detenu

Vs.

1. The Government of Tamil Nadu
Rep. By its Secretary to Government
Prohibition and Excise Department
Secretariat, Chennai – 600 009
2. The District Collector and
District Magistrate
Chengalpettu District
Chengalpattu
3. The Superintendent of Police
Chengalpattu District
Chengalpattu
4. The Superintendent
Central Prison, Puzhal, Chennai -600 066
5. The Inspector of Police
Prohibition Enforcement Wing

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Madhuranthagam
Chengalpattu District

..Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, calling for records relating to the proceedings of the second respondent in CPT No.71 of 2022 dated 16.12.2022 against the petitioner's son Thamizhventhan, male, aged about 31 years, son of Sekar and quash the same and consequently direct the respondents herein to produce the detenu who is detained under the Tamil Nadu Act 14 of 1982 currently confined at Central Prison, Puzhal, Chennai – 600 066 before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.P.Anbazzhagan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of detenu assailing a 'preventive detention order dated 16.12.2022 bearing reference CPT No.71 of 2022 [hereinafter 'impugned



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preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Impugned detention order has been made 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 No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detinue is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.856 of 2022 on the file of Madhuranthagam Prohibition Enforcement Wing for alleged offences 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 read with Rules 6 and 11 of Tamil Nadu



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Rectified Spirit Rules 2000 (Transporting). Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit qua captioned HCP several points have been urged/raised but in the final hearing Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner posited his arguments challenging the impugned preventive detention order on one point and that one point pertains to subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail. Adverting to the grounds of impugned preventive detention order, learned counsel pointed out that the Detaining Authority has relied on a bail order dated 25.08.2020 made in CrI.M.P.No.2698 of 2020 on the file of Principal Sessions Court, Chengalpattu [hereinafter 'Raji's case for the sake of convenience and clarity]. Learned counsel drew our attention to pages 117



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and 119 of the grounds booklet and submitted that Raji's case bail order has been furnished to the detenu as part of the grounds booklet. Adverting to Raji's case bail order, learned counsel submitted that Raji's case is one where bail was granted owing to the then obtaining Covid-19 situation and orders of Hon'ble Supreme Court. This is set out by the learned Sessions Judge in the bail order itself and the relevant portion reads as follows:

*'.....In furtherance to the directions of the Hon'ble Chief Justice at High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in Suo Motu W.P (Civil) No.1 of 2020 **In Re: Contagion of Covid 19 virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi** and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible. Keeping this in view and also taking note of the duration of custody, facts and circumstances of the case the petitioner / accused is ordered to be released on bail forthwith.'*

6. Covid-19 and orders of Hon'ble Supreme Court will not apply now and therefore the subjective satisfaction arrived at by Detaining Authority by comparing the ground case with Raji's case bail order is clearly a flawed



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exercise. Owing to the flawed exercise, the subjective satisfaction is impaired. The sequitur is impugned preventive detention order deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.12.2022 bearing reference CPT No.71 of 2022 made by the second respondent is set aside and the detenu Thiru.Thamizhventhan, aged 31 years, son of Thiru.Sekar is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

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Index : Yes

Speaking order

Neutral Citation : Yes

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P.S. Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal



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To

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6. The Public Prosecutor
High Court, Madras.



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and
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