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H.C.P.No.69 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

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**THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.NO.69 OF 2023

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.. Petitioner

Vs.

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

2.The Commissioner of Police
Avadi Police Commissionerate
Avadi City.

3.The Superintendent of Prison
Central Prison
Puzhal, Chennai – 600 066.

4.The Inspector of Police (L&O)
B-4, Sevvapet Police Station
Tiruvallur District.

.. Respondents



H.C.P.No.69 of 2023

PRAYER: 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, to call for the records in connection with the order of detention passed by the 2nd respondent dated 30.11.2022 in No.169/BCDFGISSSV/2022 against the petitioner's son Parthiban, M/A. 22, S/o.Babu, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Mohamed Saifulla
for Mr.M.Anand

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

ORDER

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

When the matter came up for admission on 19.01.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 09.01.2023 *inter alia* assailing a detention order dated 30.11.2022 bearing reference No.169/BCDI-GHSSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity].

2. The mother of the detenu is the petitioner.

3. Mr.A.Anandharaj, learned counsel on record for habeas corpus petitioner is before us.

4. The aforementioned detention order has been made on the basis that the detenu is a 'Goonda' under Section 2(f) of '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' for the sake of convenience and clarity].

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M.SUNDAR, J.,
and
M.NIRMALKUMAR, J.,

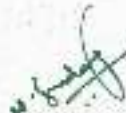
mk

5. The detention order has been assailed *inter alia* on the ground that the ^{an} similar case bail order furnished to the Detaining Authority was not properly translated.

6. *Prima facie* case made out for issue of notice.

7. Admit. Issue notice returnable in four weeks.

8. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.


[M.S.J.]


[M.N.K.J.]

19.01.2023

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2. There is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.370 of 2022 on the file of B-4 Sevvapet Police Station for alleged offences under Sections 341, 302 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve more into the factual matrix or be detained further by facts.

3. M. Mohamed Saifulla, learned counsel representing the learned counsel on record for petitioner and Mr. E. Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. The aforementioned order / proceedings made in the admission board by this Court captures the crux and gravamen of the case that is essential for appreciating this order and therefore, we deem it appropriate to not to set out the same again. We further deem it appropriate to say that the aforementioned order dated 19.01.2023 made by this Court shall be read as an integral part and parcel of this order.



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5. In the admission board though the campaign against the impugned preventive detention order was predicated essentially on the ground that similar case bail order that has been relied on was not properly translated, in the final hearing today, learned counsel representing the learned counsel on record for petitioner drew the attention of this Court to the grounds of detention qua impugned preventive detention order more particularly paragraph 3 therein and the most relevant portion of paragraph 3 therein reads as under:

'3..... Further, in a similar case, registered at R-3 Ashok Nagar Police Station Cr.No.59/2021, u/s.147, 148, 449, 324 and 302 IPC, bail was granted to the accused Thiru Balaji by the Court of Principal Sessions, Chennai, in Crl.M.P.No.10485/2021. Hence, I infer that it is very likely of his coming out on bail in B-4 Sevvapet Police Station Crime No.370/2022, since in a similar case, the bail was granted by the court after a lapse of time.....'



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6. Adverting to the aforementioned portion of the grounds of detention qua impugned preventive detention order, learned counsel submitted that the FIR vide Crime No.59/2021 has not been furnished to the petitioner and the bail order in Balaji's case is one which was granted owing to the then prevalent COVID-19 situation.

7. Responding to the aforementioned argument learned Prosecutor submitted that the alleged offence/alleged charge in both cases are broadly comparable. We carefully considered the rival submission and we perused the grounds booklet. We find that there is no reason to disagree with the learned counsel for petitioner that FIR vide Crime No.59/2021 on the file of R-3 Ashok Nagar Police Station has not been furnished to the detenu. This point urged by the petitioner enures to the benefit of the petitioner. As regards Balaji's case bail order, we find that the most relevant portion is in paragraph 5 of the bail order and that relevant portion reads as follows:

'5..... Considering the duration of the custody and stage of the case and existing Covid-19 situation, this



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court is inclined to grant bail to the petitioners subject to condition.'

8.To be noted, COVID-19 situation in legal parlance is from 15.03.2020 to 28.02.2022 i.e., the period for which Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020 inter alia extended time across the Board. The impugned preventive detention order is dated 30.11.2022 and therefore, comparison of the case on hand with the Balaji's case bail order to arrive at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail is clearly a flawed comparison which reminds one of the age old adage 'comparing Apples and Oranges'. We also remind ourselves that imminent possibility of being enlarged on bail is not qua time but qua probability. In this view of the matter, as the subjective satisfaction arrived at by the Detaining Authority is flawed, the impugned preventive detention order deserves to be dislodged is the sequitur.

9.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.11.2022 bearing reference Memo



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No.169/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru Parthiban, aged 22 years, son of Thiru. Babu, 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.)

20.06.2023

Index : Yes
Speaking
Neutral Citation : Yes
TK

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

To

- 1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police
Avadi Police Commissionarate, Avadi City.
- 3.The Superintendent of Prison
Central Prison, Puzhal, Chennai – 600 066.
- 4.The Inspector of Police (L&O)
B-4, Sevvapet Police Station, Tiruvallur District.

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5. The Public Prosecutor
High Court of Madras.



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AND
R.SAKTHIVEL, J.

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