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H.C.P.No.97 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

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

H.C.P.NO.97 OF 2023

Rekha

.. Petitioner

Vs.

1.State of Tamilnadu

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

2.The Commissioner of Police

The Greater Chennai City
Vepery, Chennai – 600 007.

3.The Superintendent of Prison

Central Prison
Puzhal, Chennai – 600 066.

4.The Inspector of Police

P-1, Pulianthope Police Station,
Chennai.

.. Respondents

1/10



H.C.P.No.97 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 relating to the detention order in Memo No.434/ BCDFGISSSV/2022, dated 25.11.2022 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband KARTHICK @ PILLAI KARTHICK S/O. GUNASEKAR aged about 34 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband KARTHICK @ PILLAI KARTHICK S/O. GUNASEKAR aged about 34 years the detenu herein at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.C.Johnson Samuel

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 23.01.2023, this Bench made an order and a scanned reproduction of the same is as follows:



H.C.P.No.97 of 2023

WEB COPY

H.C.P.No.97 of 2023

H.C.P.No.97 of 2023

M.SUNDAR, J.,
and
G.K.JIANTHURAIYAN, J.

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

Captioned Habeas Corpus Petition has been filed in this Court on 10.01.2023 *inter alia* assailing a detention order dated 25.11.2022 bearing reference No.434/BCDI/GISSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Mr.C.Johnson Samuel, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 147, 148, 324, 307 and 506(ii) of IPC in Crime No.616 of 2022 on the file of P-1 Polianthope Police Station.

4. The aforementioned detention order has been made on the premise 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



H.C.P.No.97 of 2023

WEB COPY

H.C.P.No.97 of 2023

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].

5. The detention order has been assailed *inter alia* on the ground that the representation sent by the petitioner has not been properly considered by the Detaining Authority.

6. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. 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.]

[G.K.L.J.]

23.01.2023

mk



H.C.P.No.97 of 2023

WEB COPY

2. There are three adverse cases and one ground case. The ground case which is the sole substratum of the impugned detention order is Crime No.616 of 2022 on the file of P-1 Pulianthope Police Station initially registered for alleged offences under Sections 147, 148, 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and after investigation, altered into Sections 147, 148, 324, 302 and 506(ii) of IPC. To be noted, this ground case details have been captured in the Admission Board order (scanned and reproduced supra). Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve more qua factual matrix or be detained further by facts. Suffice to say that the details necessary for appreciating this order have been captured in the Admission Board order (scanned and reproduced supra) and the same shall be read as an integral part and parcel of this order.

3. Mr.S.Senthilvel, 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.



H.C.P.No.97 of 2023

4.Though in the admission board the petitioner's campaign against the impugned preventive detention order was predicated on the point that there is delay in considering the representation sent by the petitioner, in the final hearing today Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner submitted that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is impaired owing to comparison with a dissimilar case. In this regard, elaborating on this point learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and the same reads as follows:

'4...In a similar case registered u/s.147, 148, 449, 324 and 302 IPC in R-3 Ashok Nagar Police Station in Cr.No.59/2021, the bail was granted by the Principal Sessions Court, Chennai, in Crl.M.P.No.10485/2021...'

5.Thereafter, learned counsel drew our attention to the order in Crl.M.P.No.10485 of 2021 on the file of Principal Sessions Court, Chennai



H.C.P.No.97 of 2023

(order dated 26.05.2021) as furnished to the detenu in the grounds booklet.

Learned counsel drew our attention to paragraph 5 of the bail order and the same reads as follows:

'5.The petitioners have been in custody for the past 75 days. No previous case is reported as against the petitioners. Considering the duration of the custody and stage of the case and existing Covid-19 situation, this court is inclined to grant bail to the petitioners subject to condition.'

6.Learned counsel submitted that COVID-19 situation was not prevalent when the impugned preventive detention order came to be made on 25.11.2022.

7.Responding to the aforementioned argument learned Prosecutor submitted that the alleged offence/alleged charge in both cases are broadly comparable.



H.C.P.No.97 of 2023

8. We have considered the rival submissions and we find that the submission made by the learned counsel for petitioner is acceptable as Balaji's case bail order was one which was made owing to the then prevailing COVID-19 situation as is evident from paragraph 5 of the order in Balaji's case. In this regard, we remind ourselves that 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.

9. In the light of the narrative thus far, we have no hesitation in saying that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is clearly flawed and the impugned preventive detention order deserves to be dislodged is the sequitur.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.11.2022 bearing reference Memo No.434/BCDFGISSSV/2022 made by the second respondent is set aside and



H.C.P.No.97 of 2023

the detenu Thiru. Karthick @ Pillai Karthick, aged 34 years, son of Thiru.

Gunasekar, 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 / No

Speaking / Non-Speaking

Neutral Citation : Yes/No

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
The Greater Chennai City
Vepery, Chennai – 600 007.

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

4.The Inspector of Police
P-1, Pulianthope Police Station, Chennai.

5.The Public Prosecutor, High Court of Madras.

9/10



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H.C.P.No.97 of 2023

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H.C.P.NO.97 OF 2023

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