



WEB COPY



H.C.P.No.134 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.134 of 2023

Parveen Akthar

.. Petitioner

VS

The State rep. By

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
J-9 Thuraipakkam Police Station,
Chennai – 97.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records of the detention order of Thiru.Jasim Uthim, S/o.Abdul Rashith, presently confined in Central Prison, Puzhal, Chennai in Memo No.446/BCDFGISSSV/2022 dated 30.11.2022 passed by the second respondent under Section 3(1) of T.N. Act 14/1982, set aside the same and direct the respondents to produce the detenu Thiru.Jasim Uthin, S/o.Abdul Rashith, who is confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.



WEB COPY



H.C.P.No.134 of 2023

For Petitioner : Mr.S.V.D.Rajendra Prasad
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 wife of detenu assailing a 'preventive detention order dated 30.11.2022 bearing reference BCDFGISSSV No.446/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

2. When the captioned HCP was listed for admission before this Court, proceedings/orders dated 01.02.2023 was made in the 'Admission Board' and the same reads as follows:

'Captioned Habeas Corpus Petition has been filed in this Court on 12.01.2023 inter alia assailing a detention order dated 30.11.2022 bearing reference BCDFGISSSV No.446/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.



WEB COPY



H.C.P.No.134 of 2023

2. Wife of the detenu is the petitioner.

3. Mr.S.V.D.Rajendra Prasad, 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 8(c) read with 20(b)(ii)(C) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.344 of 2022 on the file of J-9 Thuraipakkam Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed inter alia on the ground that the Detaining Authority has furnished only the English and Tamil version of the detention order and grounds of detention dated 30.11.2022 but not furnished the Hindi version of the same which is the lone language the detenu is familiar with.

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



WEB COPY



H.C.P.No.134 of 2023

respondents. List the captioned Habeas Corpus Petition accordingly.'

3. The aforementioned proceedings/orders made in the 'Admission Board' captures short facts essential and imperative for appreciating this order and therefore without setting out the same again, we deem it appropriate to say that aforementioned proceedings shall be read as an integral part and parcel of this order.

4. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.344 of 2022 on the file of J-9 Thuraipakkam Police Station for the alleged offence under Section 8(c) r/w 20(b)(ii)(C) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' (hereinafter 'NDPS Act' 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 into the factual matrix or be detained further by facts.

5. Mr.S.V.D.Rajendra Prasad, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



6. In the 'Admission Board', learned counsel for petitioner posited and projected his campaign against the impugned preventive detention order on the point that Hindi version/Hindi translation of the impugned preventive detention order and the grounds of detention have not been furnished but in the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. In support of this submission and in elaboration of this submission, learned counsel drew our attention to two portions of the impugned preventive detention order and the same read as follows:

'Based on the said special report, the Inspector of Police, J-9 Thuraipakkam Police Station has registered a case in Cr.No.344/2022 u/s 8(c) r/w 20(b)(ii)(C) of NDPS Act, 1985 and took up the investigation.'

'It is pertinent to note that in a similar case registered at D-1 Triplicane Police Station Crime No.638/2021, u/s.8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985, bail was granted to the accused Tmt.Santhi by the Principal Special Court under EC & NDPS Act, Chennai – 104 in CrI.M.P.No.2822/2021.....'

7. Learned counsel submitted that the aforementioned



H.C.P.No.134 of 2023

portions show that the aforementioned subjective satisfaction of the detaining authority has been arrived at by comparing the bail order in intermediate quantity under Section 20(b)(ii)(B) of NDPS Act whereas the ground case is one for alleged commercial quantity under Section 20(b)(ii)(C) of NDPS Act.

8. In response to the aforementioned argument, learned Prosecutor submitted that the ground case as well as Santhi's case bail order under NDPS Act pertain to same substance qua NDPS Act and are therefore comparable.

9. We carefully considered the rival submissions and we find that the subjective satisfaction is impaired because the parameters and determinants for grant of discretionary relief of bail should also be taken into account while comparing a case with another case to arrive at subjective satisfaction regarding imminent possibility of detenu being enlarged on bail. In the light of Section 37 of NDPS Act, which is in the nature of bar qua bail in commercial quantity cases, we have no difficulty in saying that the statute itself recognises a distinction between in between quantity/intermediate quantity under Section 20(b)(ii)(B) of NDPS Act and commercial quantity under Section 20(b)(ii)(C) of NDPS Act when it comes to grant of bail and therefore comparison of one with the other to



H.C.P.No.134 of 2023

arrive at aforementioned subjective satisfaction is clearly a flawed exercise which reminds us of the age old adages 'comparing apples and oranges' and 'comparing cheese and chalk'.

10. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 30.11.2022 bearing reference BCDFGISSSV No.446/2022 made by the second respondent is set aside and the detenu Thiru.Jasim Uthin, aged 27 years, son of Thiru.Abdul Rashith, 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
Neutral Citation : Yes/No
mmi

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



H.C.P.No.134 of 2023

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai, Vepery, Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
J-9 Thuraipakkam Police Station,
Chennai – 97.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.134 of 2023

**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

mmi

H.C.P.No.134 of 2023

20.06.2023