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HCP NO.127 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.127 OF 2023

H.Suleka

.. Petitioner

Vs

- 1.The State Represented
By its Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
- 2.The Commissioner of Police /
Detaining Authority
Coimbatore City.
- 3.The Superintendent of Prison
Coimbatore Central Prison
Coimbatore.
- 4.The Inspector of Police
D-1, Ramanathapuram Police Station,
Coimbatore District.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records leading to the detention of the petitioner's son H.Mohammed Rasik, son of Hakkim, aged about 20 years under Act 14/1982 vide detention order dated 22.11.2022 on the file of the second respondent made in proceedings in C.No.74/G/IS/2022, quash the same, consequently direct the respondents herein to produce the body and person of H.Mohammed Rasik, son of Hakkim, aged about 20 years, who is lodged at Central Prison, Coimbatore, before this Court, set him at liberty.

For Petitioner : Mr.C.D.Sugumar
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 30.01.2023, 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 19.01.2023 *inter alia* assailing a detention order dated 23.11.2022 bearing reference C.No.74/G/TS/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. Mother of the detenu is the petitioner.

3. Mr.C.D.Sugumar, 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) r/w 20(b)(ii)(C) and Section 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.477 of 2022 on the file of D-1 Ramanathapuram 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



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Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Shm-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 made by the petitioner has not been considered in time.

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.L.]

[M.N.K.J.]

30.01.2023

mk



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2.The ground case which is the sole substratum of the impugned detention order is Crime No.477 of 2022 on the file of D-1 Ramanathapuram Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(C) and 25 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.

3.Mr.C.D.Sugumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4.Though in the admission board the petitioner campaign against the impugned preventive detention order was predicated on the point that there is a delay in considering the representation sent by the petitioner, in the final hearing learned counsel predicated his campaign against the impugned preventive detention order on the subjective satisfaction arrived at by the



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Detaining Authority qua imminent possibility of detenu being enlarged on bail being flawed.

5. In support of his argument, learned counsel drew the attention of this Court to the grounds of impugned preventive detention order and submitted that aforementioned subjective satisfaction has been arrived at by the Detaining Authority by placing reliance on a bail order dated 20.09.2016 in the case of one Raja @ Rajendran in 'CrI.M.P.No.902 of 2016 vide Crime No.129 of 2016 on the file of NIB CID, Coimbatore' (hereinafter '*Raja @ Rajendran case*' for the sake of convenience and clarity) to arrive at above mentioned subjective satisfaction. Learned counsel submitted that '*Raja @ Rajendran case*' bail order as furnished to the detenu in the grounds booklet makes it clear that it is a case under Section 20(b)(ii)(B) (intermediate quantity) under NDPS Act whereas the ground case i.e., Crime No.477 of 2022 on the file of D-1 Ramanathapuram Police Station is under Section 8(c) r/w 20(b)(ii)(C). Learned counsel further submits that therefore the ground case is a commercial quantity matter whereas Raja @ Rajendran case is intermediate quantity matter. We also find from the bail petition that in the



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case of Raja @ Rajendran, the allegation pertains to 3 kg of Ganja whereas in the ground case it is a commercial quantity which is well above 20 kgs vide the Table to NDPS Act. To be noted all the provisions of law referred to pertain to NDPS Act.

6.Learned Prosecutor submits that the substance is the same and therefore the detaining authority has arrived at subjective satisfaction by placing reliance on Raja @ Rajendran case.

7.We carefully considered the rival submissions but we are unable to sustain the submission of the Prosecutor interalia owing to Section 37 (1)(b) of NDPS Act wherein there is a specific bar qua grant of bail with regard to commercial quantity. This means that comparing Raja @ Rajendran case which is intermediate quantity within the meaning of Section 20(b)(ii)(B) with the ground case which is a commercial quantity under Section 20(b)(ii)(C) is clearly a case of comparing apples and oranges. As the comparison is bad, the sequitur is, subjective satisfaction arrived at by the detaining authority qua imminent possibility of the detenu being enlarged on



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bail is impaired. As the subjective satisfaction is impaired, further sequitur is, the impugned preventive detention order deserves to be dislodged.

8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.11.2022 bearing reference C.No.74/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.H.Mohammed Rasik, aged 20 years, son of Thiru. Hakkim, 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

Neutral Citation : Yes

TK

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



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To

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By its Secretary to Government
Home, Prohibition and Excise Department
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Coimbatore City.
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- 5.The Public Prosecutor
High Court, Madras.



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