



H.C.P.No.180 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

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

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P.Bebi

.. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
All Women Police Station,
Kancheepuram, Kancheepuram District.

.. 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 second respondent in Rc.No.12847/2022/M6-D.O.No.01/2023 and quash the detention order dated 05.01.2023 and direct the respondents to produce the detenu Ranjith (aged about 26 years), S/o.Pazhani, detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

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For Petitioner : Mr.V.V.Sairam
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 07.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 19.01.2023 inter alia assailing a detention order dated 05.01.2023 bearing Rc.No.12847/2022/M6-D.O.No.01/2023 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.V.V.Sairam, 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 363, 376(3), 376(2)(n), 506(ii) IPC r/w 4(2), 6(1) of Protection of Children from Sexual Offences Act, 2012 in Crime No.15 of 2022 on the file of All Women Police Station, Kancheepuram.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) 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 grounds that there is inordinate delay of 75 days in passing the detention order and the bail petition relied upon by the



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detaining authority to arrive at a subjective satisfaction was dismissed on the date of passing detention order.

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. '

2. The aforementioned order made in the 07.02.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.15 of 2022 on the file of Kancheepuram All Women Police Station for the alleged offences under Sections 363, 376(3), 376(2)(n), 506(ii) of IPC r/w 4(2), 6(1) of POCSO Act. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.V.V.Sairam, learned counsel on record for petitioner and



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Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from paragraph 5 of the Admission Board order dated 07.02.2023, at the time of admission, learned counsel for petitioner projected the argument that there is inordinate delay in passing the impugned preventive detention order and the bail petition relied on by the detaining authority to arrive at subjective satisfaction was dismissed but in the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 5 of the grounds of detention and the relevant portion reads as follows:

'5..... However, in similar case, the similar accused was already released on bail in the same nature of offence through appropriate Court details of which are follows:

In All Women Police Station, Kancheepuram Crime No.12/2021 u/s 363, 365, 376(3), 376(2)(n) IPC and 4, 6 of POCSO Act, 2012 the accused Thiru.Hari S/o Jegannathan was released on bail through Special Court for exclusive trial of cases under POCSO Act Kancheepuram District @ Chengalpattu in



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Crl.M.P.No.290/2022 dated 17.03.2022.

Hence I infer that as such there is real possibility of coming out on bail in above case also....'

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6. Learned counsel submitted that aforementioned bail order in 'Hari's case' (hereinafter *Hari's case* bail order for the sake of convenience) has been furnished to the detenu as part of the grounds booklet. Adverting to the bail petition as well as the bail order in the grounds booklet, learned counsel submitted that the aforementioned bail order dated 17.03.2022 made by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpattu is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the subjective satisfaction is impaired. Elaborating on this submission, learned counsel drew our attention to paragraph 6 of the bail order, which reads as follows:

'6.On perusal of the records, the petitioner would be entitled to be released on statutory bail for non-filing of the charge sheet by the respondent within a period of 90 days. Further it appears that the investigation has been almost completed. The respondent/police did not file the charge sheet even after the expiry of the stipulated period of 90 days under the proviso to the Section 167(2)(a)(i) of Cr.P.C. Hence the petitioner is entitled for statutory bail. Considering the period of detention that the accused was in the judicial custody for the past 92 days, this Court inclined to enlarge the petitioner on bail.'



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

8. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 05.01.2023 bearing reference Rc. No.12847/2022/M6-D.O.No.01/2023 made by the second respondent is set aside and the detenu Thiru.Ranjith, aged 26 years, Son of



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Thiru.Palani, 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.)
10.07.2023

Index : Yes

Neutral Citation : Yes

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

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
All Women Police Station,
Kancheepuram, Kancheepuram District.
- 5.The Public Prosecutor
High Court, Madras.



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

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