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H.C.P.No.146 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

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

H.C.P.No.146 of 2023

Shanthi

.. Petitioner

VS

- 1.The State of Tamil Nadu rep. By
The Addl. Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section), Vepery, Chennai – 7.
- 3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
P-6 Police Station, Kodungaiyur,
Chennai – 118.

.. 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 relating to the detention order in BCDFGISSSV No.421/2022 dated 14.11.2022 passed by the second respondent under Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's brother Venkatesh @ Karukka Venkatesh, S/o.Elumalai, the detenu, now confined in



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Central Prison, Puzhal, Chennai before this Court and petitioner's brother Venkatesh @ Karukka Venkatesh, S/o.Elumalai, aged about 35 years, the detenu herein and set him at liberty.

For Petitioner : Mr.S.Ambedkar

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 03.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 23.01.2023 inter alia assailing a detention order dated 14.11.2022 bearing reference No.421/BCDFGISSSV/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. Sister of the detenu is the petitioner.

3. Mr.S.Ambedkar, 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)(B) and 29(1) of 'The Narcotic Drugs and Psychotropic



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Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.707 of 2022 on the file of P-6 Kodungaiyur 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 some of the documents referred to by the Detaining Authority in the Booklet are not legible.

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 03.02.2023 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.



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3. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.707 of 2022 on the file of P-6 Kodungaiyur Police Station for the alleged offence under Section 8(c) r/w 20(b)(ii)(B), 29(1) of NDPS Act. 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.

4. Mr.S.Ambedkar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the Admission Board, though the point that some of the documents referred to by the detaining authority and furnished as part of the grounds booklet are not legible was projected, in the final hearing today, Mr.S.Ambedkar, learned counsel for petitioner 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/flawed.



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6. Elaborating on the aforesaid submission, learned counsel submitted that the detaining authority vide grounds of impugned preventive detention order has relied on 'bail order dated 31.08.2018 made in CrI.M.P.No.662 of 2019 on the file of Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai' (hereinafter '*Velazhaki's case*' for the sake of convenience and clarity). Learned counsel submitted that *Velazhaki's case* bail order has been furnished to the detenu in the grounds booklet and the same is at pages 210 to 212. This Bench had the benefit of perusing *Velazhaki's case* bail order. Learned counsel drew our attention to a very crucial paragraph in *Velazhaki's case* bail order and the same reads as follows:

'The learned Special Public Prosecutor made an endorsement in the bail petition stating that the petitioner may be released on bail on any condition.'

7. Learned counsel submitted that comparing *Velazhaki's case* bail order describing the same as similar and arriving at aforementioned subjective satisfaction is clearly flawed.

8. In response to the above argument, learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that the alleged offence/charge qua *Velazhaki's case* and the ground case are largely similar and comparable.



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9. We carefully considered the rival submissions.

10. We have no difficulty in accepting the argument of learned counsel for petitioner that the aforementioned subjective satisfaction arrived at by the detaining authority is flawed as comparing the ground case with another bail order is not limited to comparing alleged offences/charges but the determinants/parameters for bail also need to be compared. In the case on hand, it is seen that in *Velazhaki's case* bail order, learned Prosecutor has made an endorsement in the bail petition that the petitioner may be released on bail on any condition. Therefore, comparing *Velazhaki's case* with the ground case and saying that there is imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. Owing to this flaw, the impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.11.2022 bearing reference No.421/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Venkatesh @ Karukka Venkatesh, aged 35 years, son of Thiru.Elumalai, is directed to be set at liberty forthwith, if not required in connection with any other case / cases.



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There shall be no order as to costs.

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(M.S.,J.) (R.S.V.,J.)

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Index : Yes/No

Neutral Citation : Yes/No

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

To

- 1.The Addl. Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section), Vepery, Chennai – 7.
- 3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
P-6 Police Station, Kodungaiyur,
Chennai – 118.
- 5.The Public Prosecutor,
High Court, Madras.

**M.SUNDAR, J.,
and**



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