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H.C.P.No.142 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.142 of 2023

E.Radhika

.. Petitioner

VS

1.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

2.The Commissioner of Police,
Tambaram City (Goondas Section),
Sholinganallur, Chennai.

3.The Superintendent of Prison,
O/o. Central prison, Puzhal, Chennai.

4.The Inspector of Police,
O/o.The Inspector of Police,
T-18 Thazhambur Police Station,
Chennai.

.. 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 in Memo No.BCDFGISSSV/203/2022 on the file of the
second respondent, quash the detention order dated 24.11.2022
and direct the respondents to produce the detenu Sevukkar



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Rathnam @ Rathnam, son of Karthik Raja detained at the Central Prison, Puzhal, Chennai, under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.P.K.Ganesh
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 sister of detenu assailing a 'preventive detention order dated 24.11.2022 bearing reference BCDFGISSSV No.203/2022' [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:



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"Captioned Habeas Corpus Petition has been filed in this Court on 23.01.2023 inter alia assailing a detention order dated 24.11.2022 bearing reference BCDFGISSSV No.203/2022 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.P.K.Ganesh, 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, 341, 294(b), 324 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.308 of 2022 on the file of T-18 Thazhambur 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 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 dated 11.01.2023 sent to the first respondent has not been considered.

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



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7. *Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all 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 are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.308 of 2022 on the file of T-18 Thazhambur Police Station for alleged offences under Sections 147, 148, 341, 294(b), 324 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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.



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5. Mr.P.K.Ganesh, 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 as would be evident from paragraph 5 of 01.02.2023 orders/proceedings, learned counsel for petitioner projected his campaign against the impugned preventive detention order on the ground that a representation dated 11.01.2023 sent to the first respondent has not been considered 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 qua imminent possibility of detenu being enlarged on bail is impaired.

7. Elaborating on aforementioned contention, learned counsel drew our attention to a portion of paragraph 4 of the grounds of detention qua impugned preventive detention order and that portion of paragraph 4 reads as follows:

'4. I am also aware that K.Sevukkar Rathnam @ Rathnam who was remanded in T-18 Thazhambur P.S.



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Cr.No.308/2022 has filed a bail petition before the Principal District and Sessions Judge, Chengalpattu in T-18, Thazhambur P.S. Cr.No.308/2022 vide Crl.M.P. No.4975/2022 and the same is pending. It is pertinent to note that in a similar case, registered at Sankar Nagar P.S. Cr.No.284/2019 u/s. 147, 148, 341, 294(b), 302 IPC, bail was granted to the accused Karan Kumar by the High Court of Madras in Crl.O.P. No.14395/2019 on 14.06.2019. Hence, I infer that it is very likely of his coming out on bail in T-18 Thazhambur Police Station Cr.No.308/2022 since in the similarly placed cases, bails were granted by the courts after a lapse of time....'

8. Thereafter, learned counsel drew our attention to the grounds booklet wherein Karan Kumar's bail order has been furnished and a scanned reproduction of the same is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)
Friday, the thirteenth day of June Ten Thousand Nineteen

PERCIVAL
The Hon'ble Mrs Justice V. SHARANI THIRUGODAR
CRIMINAL ORIGINAL PETITION No. 14202 of 2019

KARAN SINGH
[PETITIONER / ACCUSED]

VS
[RESPONDENT]

STATE EMP. BY
INSPECTION OF POLICE
HIGH MADRAS POLICE STATION,
MADRAS.
FORMAL DEFENDENT.
(CRIME NO. 1294 OF 2019)

For Petitioner : M.C.T. ANANDARAMAN Advocate
For Respondent : M.C.T. S. DAVIDIA Cont. Advocate (Crl. Side)

PETITION FOR ANTICIPATORY BAIL Under Sec. 439 Cr.P.C.
ORDER : The Court Made the following order :-

The petitioner was apprehended arrest at the hands of the respondent police for the offence punishable under Sections 147, 148, 341, 342 and 302 of I.P.C. in Crime No. 294 of 2019, seeks anticipatory bail.

1. This Court does not find any change in circumstances, after a earlier order passed by this Court on 15.05.2019 in I.O.P. No. 1294 of 2019.

2. In the result, this Criminal Original Petition is dismissed.

-sd/-
14/06/2019

In order, on being produced, to punctually observed and carried to execution by all concerned
THIS COURT

[Signature]
Sd/- Assistant Registrar (Criminal/C.E.)
High Court, Madras - 600 104.

/ *[Signature]* /
சுற்றுலா துறைமுகம்
தமிழக அரசு நிர்வாகம்,
கோவை-635072.

[Signature]
சுற்றுலா துறைமுகம்
தமிழக அரசு நிர்வாகம்,
கோவை-635072.

சுற்றுலா துறைமுகம்
தமிழக அரசு நிர்வாகம்
கோவை-635072

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9. Adverting to the above, learned counsel submitted that the aforementioned subjective satisfaction is clearly flawed as in Karan Kumar's case, the bail application has been dismissed.

10. As the aforementioned argument turns heavily on records and case file before us, learned Prosecutor really does not have much of a say.

11. In the light of the narrative thus far, we have no difficulty in saying that the aforementioned subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly flawed. As a further sequitur, we have no hesitation in saying that the impugned preventive detention order is vitiated by the vice of non-application of mind also.

12. As the impugned preventive detention order is vitiated owing to impaired subjective satisfaction and is also afflicted by the vice of non- application of mind, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.



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13. Ergo, the sequitur is, captioned HCP is allowed.

Impugned detention order dated 24.11.2022 bearing reference BCDFGISSSV No.203/2022 made by the second respondent is set aside and the detenu Thiru.K.Sevukkar Rathnam @ Rathnam, aged 23 years, son of Thiru.Karthik Raja, 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

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

P.S. II:

Though we have disposed of captioned HCP and though the captioned HCP detenu will get the benefit of the order forthwith, we deem it appropriate to call for a report from the second and fourth respondents (detaining authority and sponsoring authority respectively) for the following reasons:

(i) a bail order where the bail application has been dismissed has been relied on by the detaining authority to arrive at subjective satisfaction that there is imminent possibility of



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detenu being enlarged on bail. This Court finds this to be a case of non-application of mind which comes across as a casual manner of dealing with preventive detention orders.

(ii) Today, Mr.M.Selvam, Grade II Police Constable of 2018 batch who is completely unaware of the facts of the case has been deputed to instruct the State Additional Public Prosecutor.

2. We deem it appropriate to requisition a report from the second and fourth respondents as regards above aspects of the matter. Let the second and fourth respondents remain present in person in the next listing when the report shall be filed. We are acutely conscious that officers are requisitioned to remain present in Court only as an exception and we do find this case to fall in that exception owing to what comes across as insouciant and pococurante approach to preventive detention which is a exception qua liberty and habeas corpus writ petition which is a high prerogative writ in habeas jurisprudence and therefore we are making this order.

3. List this matter under the cause list caption 'FOR REPORT' on 26.06.2023.



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To

- 1.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Tambaram City (Goondas Section),
Sholinganallur, Chennai.
- 3.The Superintendent of Prison,
O/o. Central prison, Puzhal, Chennai.
- 4.The Inspector of Police,
O/o.The Inspector of Police,
T-18 Thazhambur Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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