



H.C.P.No.164 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**

H.C.P.No.164 of 2023

T.Thangaraj

.. Petitioner

Vs

1. The State of Tamil Nadu rep. By
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The District Collector and District Magistrate,
Chengalpattu District.
- 3.The Superintendent of Police,
Chengalpattu District.
- 4.The Superintendent of Prison,
Special Prison for Women,
Puzhal, Chennai – 66.
- 5.The Inspector of Police,
PEW, Madhuranthagam,
Chengalpattu 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 entire
records from the second respondent in connection with order in CPT

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No.4/2023 dated 08.01.2023 and quash the same and produce the petitioner's mother namely Kumari, W/o.Thenappan, aged 55 years, now confined in Special Prison for Women, Puzhal, Chennai – 66 under the Tamil Nadu Act 14 of 1982 before this Court and set her at liberty.

For Petitioner : Ms.S.Nadhiya
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 24.01.2023 inter alia assailing a detention order dated 08.01.2023 bearing reference CPT No.04/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Son of the detainee is the petitioner.

3. Ms.S.Nadhiya, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detainee is for alleged offences under Sections 4(1)(aaa) and 4(1-A) of 'Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' for the sake of convenience and clarity] r/w Sections 6 and 11 of 'Tamil Nadu Rectified Spirit Rules 2000' [hereinafter 'TNRS Rules' for the sake of convenience and clarity] in Crime No.912 of 2022 on the file of Madhuranthagam Prohibition Enforcement Wing.



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4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 in the Arrest Memo it is stated that the detenu's arrest was intimated to the petitioner through Short Message Service ['SMS'] but the content of SMS is not in the booklet.

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.

3. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive



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detention order is Crime No.912 of 2022 on the file of Madhuranthagam Prohibition Enforcement Wing for the alleged offences under Sections 4(1)(aaa), 4(1-A) of TNP Act r/w 6 and 11 of TNRS Rules. 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. Ms.S.Nadhiya, learned counsel on record for petitioner and 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 03.02.2023, at the time of admission, learned counsel for petitioner projected the argument that in the arrest memo it is stated that the detainee's arrest was intimated to the petitioner through SMS but the content of SMS is not there in the booklet but in the Final Hearing Board today, learned counsel argued on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detainee being enlarged on bail is impaired.

[Elaborating on this submission, learned counsel drew our attention to a](#)



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portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

'5.....In Prohibition Enforcement Wing, Madhuranthagam Cr.No.1688/2020 u/s 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting) against the similar accused Raji, S/o.Murugan was released on bail through Principal District and Sessions Court, Chengalpattu in Crl.M.P. No.2698/2020 on 25.08.2020;

Hence I infer that there is a real possibility of his coming out on bail if he applied bail petition in the above ground case since in similar cases, bails are granted by the court after lapse of time.....'

6. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on *Raji's* case bail order being bail order dated 25.08.2020 in Crl.M.P. No.2698 of 2020 on the file of Principal Sessions Judge, Kancheepuram at Chengalpattu. Learned counsel advertent to the bail order in *Raji's* case submitted that the bail order was made in view of directions of Hon'ble Supreme Court in *Suo Motu W.P. (Civil) No.1 of 2020* owing to the 'Corona virus Pandemic and Consequent lock down' which shall be referred to as 'Covid-19 situation' which cannot be made applicable to



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the ground case or the adverse case qua bail as on the date of impugned preventive detention order Covid 19 situation had paled into past.

7. In response to the above argument, learned Prosecutor submitted to the contrary and said that the two orders are broadly comparable.

8. We had the benefit of perusing the bail order in *Raji's case* and we find that submission made by learned counsel for petitioner is acceptable. The reason is, a portion of the bail order of learned Sessions Judge in *Raji's case* reads as follows:

*'.....In furtherance to the directions of the Hon'ble Chief Justice at High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in Suo Motu W.P (Civil) No.1 of 2020 **In Re: Contagion of Covid 19 virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi** and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible. Keeping this in view and also taking note of the duration of custody, facts and circumstances of the case the petitioner/accused is ordered to be released on bail forthwith...'*



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9. It is clear that *Raji's case* bail order is one where the bail has been granted primarily owing to the then obtaining Covid-19 situation and orders of Hon'ble Supreme Court in this regard. Therefore, taking *Raji's case* bail order as a benchmark for arriving at subjective satisfaction qua imminent possibility of detainee being enlarged on bail is clearly a flawed exercise. Therefore, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 08.01.2023 bearing reference CPT No.04/2023 made by the second respondent is set aside and the detainee Tmt.Kumari, aged 55 years, Wife of Thiru.Thenappan, 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 Special Prison for Women, Puzhal, Chennai.

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To

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1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The District Collector and District Magistrate,
Chengalpattu District.
3. The Superintendent of Police,
Chengalpattu District.
4. The Superintendent of Prison,
Special Prison for Women,
Puzhal, Chennai – 66.
5. The Inspector of Police,
PEW, Madhuranthagam,
Chengalpattu District.
6. The Public Prosecutor
High Court, Madras.



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

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