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HCP No.197 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.197 of 2023

Vengammal
W/o.Bangara Raju

.. Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Chennai-600 009.
2. The Commissioner of Police
Avadi City.
3. The Superintendent
Central Prison
Puzhal, Chennai-600 006.
4. State Rep. by
The Inspector of Police L & O,
M-4, Redhills Police Station.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling upon the production of the records relating to the detention order dated 09.12.2022 made in detention order Memo No.178/BCDFGISSSV/2022 passed by the 2nd respondent



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herein, quash the same and direct the respondents to produce the body or person of the petitioner's son-in-law Anugur Somesh Kumar, son of Sanni Babu, male aged about 32 years branded as Drug Offender and now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.T.S.Sasi Kumar
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 08.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 25.01.2023 inter alia assailing a detention order dated 09.12.2022 bearing reference No.178/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. Mother-in-law of the detenu is the petitioner.

3. Mr.T.S.Sasi Kumar, 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), 25, 29(1) of 'Narcotic Drugs and Psychotropic



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Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.653 of 2022 on the file of M4 Red Hills 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 representation made by the petitioner to Advisory Board was not considered.

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 08.02.2023 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 is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.653 of 2022 on the file of M4 Red Hills Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(C), 25, 29(1) of NDPS 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.T.S.Sasi Kumar, 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, the point that the representation made by petitioner to Advisory Board was not considered was projected but in the final hearing today, Mr.T.S.Sasi Kumar, learned counsel predicated his campaign against the impugned preventive detention order on two points and they are as follows:

(a) A bail order in CrI.MP.No.1842 of 2020 has been relied on and relevant portion in paragraph No.3 of the grounds



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of impugned preventive detention order reads as follows:

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'3..... In a similar case registered in D1 Triplicane Police Station Cr.No.932/2020 u/s.8(c) r/w 20(b)(ii)(B) of NDPS Act 1985 bail was granted by the Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.1842/2020.....'

The above order has not been furnished to the detenu;

(b) Even according to the aforementioned portion, similar case bail order is of 'intermediate quantity' under Section 20(b)(ii)(B) of NDPS Act whereas in solitary ground case it is 'commercial quantity' under Section 20(b)(ii)(C) of NDPS Act;

6. In response to the above arguments, learned Prosecutor submitted to the contrary as follows:

(a) As the details of bail order have been given, non-furnishing of copy cannot be put against the impugned preventive detention order;

(b) The offences in similar case and ground case are in the nature of NDPS Act with regard to same substances and therefore, these two are comparable;

7. We carefully considered the rival submissions. As regards the first



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point, we have no hesitation in saying that the aforementioned similar case bail order has been relied on by the Detaining Authority for arriving at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail and therefore, non-furnishing of this copy certainly hampers the rights of the detenu to make an effective representation. Right to make an effective representation qua preventive detention order is a constitutional safeguard ingrained in Article 22(5) of Constitution of India and therefore, the first point enures to the benefit of the petitioner. As regards the second point i.e., 'intermediate quantity' and 'commercial quantity', the Statute itself makes a distinction in the light of Section 22(b)(ii)(B) and Section 22(b)(ii)(C) of NDPS Act. However, a point of greater significance is, as regards this distinction parameters for grant of bail are completely different owing to Section 37 of NDPS Act. In this view of the matter, Section 37 of NDPS Act is in the nature of bar as regards bail when it comes to commercial quantity. Therefore, comparing a case in which bail has been granted with regard to intermediate quantity under Section 22(b)(ii)(B) of NDPS Act with a ground case wherein it is commercial quantity under Section 22(b)(ii)(C) of NDPS Act is clearly a flawed exercise which reminds one of the age old adages 'comparing Apples and Oranges' and 'comparing Cheese and



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Chalk'. The sequitur is subjective satisfaction arrived at by the Detaining Authority is impaired. Further sequitur is the impugned preventive detention order deserves to be dislodged.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 09.12.2022 bearing reference No.178/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Anugur Somesh Kumar, male, aged 32 years, son of Thiru.Sanni Babu, 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.)
30.06.2023

Index : Yes
Speaking
Neutral Citation : Yes

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

M.SUNDAR, J.,
and



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R.SAKTHIVEL, J.,

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To

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Chennai-600 009.
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