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HCP No.155 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.155 of 2023

Ramya
W/o.Ajith @ Itta Ajith

.. Petitioner

Vs.

1. The Addl. Chief Secretary to Government
Home Prohibition and Excise Dept.,
Secretariat
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai-66.
4. The Inspector of Police,
Law & Order
C3 Seven Wells 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 connection with the order of detention passed by the second respondent dated 23.12.2022 in



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Memo No.484/BCDFGISSSV/2022 against the petitioner's husband Ajith Kumar @ Itta Ajith, Male, aged 26 years, son of Munusamy, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
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 27.01.2023 inter alia assailing a detention order dated 23.12.2022 bearing reference No.484/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. Wife of the detenu is the petitioner.

3. Mr.S.Senthilvel, 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 offence under Section



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302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.298 of 2022 on the file of C3 Seven Wells 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 there is a variation in the English version and Tamil version of the grounds of detention.

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 five adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.298 of 2022 on the file of C3 Seven Wells Police Station for an alleged offence under Section 302 of IPC. 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.S.Senthilvel, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though at the time of admission the point that there is variation between English version and Tamil translation in the grounds of detention was projected as a point, in the final hearing today, Mr.S.Senthilvel, learned counsel on record for petitioner predicated his argument on the ground that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is impaired.



6. Elaborating his submission in this regard, learned counsel drew our attention to a portion of paragraph No.4 of grounds of impugned preventive detention order which reads as follows:

'4. In a similar case registered u/s 147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station Cr.No.59/2021, the bail was granted by the learned Principal Sessions Court, Chennai in Crl.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application in C3 Seven Wells Police Station Cr.Nos.297/2022 & 298/2022 before the appropriate Court, since in a similar case, the bail was granted by the Court after a lapse of time.....'

7. Learned counsel submits that the bail order in the aforementioned case [hereinafter **Balaji's's** case for the sake of convenience as Balaji's is the first petitioner in this bail order] has been furnished to the detenu as part of grounds booklet at Page Nos.1067 to 1071. Adverting to this **Balaji's** case bail order, learned counsel drew our attention to a portion of paragraph No.5 of **Balaji's** case which reads as follows:

'5. No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid 19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'



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8. Referring to the aforementioned **Balaji's** case bail order, learned counsel submitted that **Balaji's** case was one where (a) there was no previous bad antecedents for the petitioners whereas in the case on hand, there are as many as five adverse cases even according to the Detaining Authority and (b) in **Balaji's** case, then obtaining Covid-19 situation was a ground and Covid-19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide *Suo Motu Writ Petition (C) No.3 of 2020*.

9. In response to the aforementioned argument, learned Prosecutor drew our attention to paragraph Nos.7 and 27 of **Rekha's** case [**Rekha Vs. State of Tamil Nadu and another** reported in (2011) 5 Supreme Court Cases 244] which read as follows:

'7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All



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that has been stated in the grounds of detention is that “in similar cases bails were granted by the courts”. In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.'

10. Learned counsel submitted that offences in the ground case and **Balaji's** case are comparable and therefore, it is clearly a fair comparison and going by **Rekha's** case, the subjective satisfaction cannot be said to be impaired.



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11. We carefully considered the submissions made on either side. We find that **Rekha's** case does not enure to the benefit of the prosecution and on the contrary, it enures to the benefit of the petitioner. The reason is, in **Rekha's** case, Hon'ble Supreme Court has made it clear that even in cases where bail application has been moved and is pending or in cases where no bail application is pending, an exception can be made as regards subjective satisfaction if a co-accused whose case stands on the same footing had been granted bail. Though the reference is to co-accused, it can be extended to other accused in other cases is learned Prosecutor's say but we are leaving this argument open for the present. However, the point is **Rekha's** case talks about 'cases standing on the same footing'. We respectfully followed the ratio laid down by Hon'ble Supreme Court. 'Cases standing on the same footing' expression as regards bail orders necessarily means that the offences / charges should be comparable and determinants / parameters which has impelled the bail Court in gravitating towards grant of discretionary relief of bail should also be comparable. One of the two comparisons as a stand alone can lead to a preposterous comparison i.e., a comparison which would remind one of age old adages 'comparing Apples



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and Oranges' and 'comparing Cheese and Chalk'. Therefore, we respectfully follow the ratio laid down by Hon'ble Supreme Court in **Rekha's** case and hold that the comparison of ground case and **Balaji's** case in the case on hand is clearly a flawed exercise as in **Balaji's** case there are no bad antecedents and in **Balaji's** case Covid-19 situation i.e., period from 15.03.2020 to 28.02.2022 vide Suo Motu Writ Petition (C) No.3 of 2020 of Hon'ble Supreme Court was operating.

12. If the comparison is flawed, the sequitur is the subjective satisfaction is impaired. If the subjective satisfaction is impaired, further sequitur is impugned preventive detention order deserves to be dislodged.

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

14. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 23.12.2022 bearing reference No.484/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Ajith Kumar @ Itta Ajith, male, aged 26 years, son of



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Thiru.Munusamy, 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.)
28.06.2023

Index : Yes
Speaking
Neutral Citation : Yes
mk

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

To

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Home Prohibition and Excise Dept.,
Secretariat
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai.
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