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H.C.P.No.167 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.167 of 2023

K.Gobi

.. Petitioner

VS

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.

2.The Commissioner of Police,
Coimbatore City, Coimbatore District.

3.The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.

4.The Inspector of Police,
Peelamedu Police Station,
Coimbatore 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 relating to the detention order in C.No.66/G/IS/2022 dated 05.11.2022 on the file of the second respondent herein and quash the same as illegal and consequently direct the respondents herein to produce the detenu K.Gobi, son of Kannaiah, aged 25 years, now detained in Central Prison, Coimbatore, before this Court and set him at liberty.



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For Petitioner : Mr.G.Jaisivaramaraj
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 the detenu assailing a 'preventive detention order dated 05.11.2022 bearing reference C.No.66/G/IS/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 07.02.2023 was made in the 'Admission Board' and the same reads as follows:

'Captioned Habeas Corpus Petition has been filed in this Court on 27.01.2023 inter alia assailing a detention order dated 05.11.2022 bearing C.No.66/G/IS/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of



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convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Detenu is the petitioner.

3. Mr.G.Jaisivaramaraj, 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 Section 8(c) r/w 20(b)(ii) (B) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.896 of 2022 on the file of E-2, Peelamedu 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 grounds that the Form for Detention has not been translated properly and some of the pages in the booklet furnished to the detenu 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.'



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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 is no adverse case. The ground case which is sole substratum of the impugned detention order is Crime No.896 of 2022 on the file of E-2 Peelamedu Police Station for the alleged offence under Section 8(c) r/w 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances Act' [hereinafter 'NDPS Act' 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 more into the factual matrix or be detained further by facts.

5. Mr.G.Jaisivamaraj, 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, learned counsel for petitioner projected his argument on the ground that the translated copies



(some pages) of the booklet are not legible 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 as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 6 of the grounds of detention and the relevant portion reads as follows:

'Further in Coimbatore City, B-1 Bazaar Police Station Crime No.12/2018 u/s 8(c) r/w 20(b)(ii)(B) Narcotic Drugs and Psychotropic Substances Act 1985 (which is registered under similar sections of law), bail was granted to accused A.Karthikeyan @ Karthi by the Court of Hon'ble Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore in CMP No.151/2018 dated 08.03.2018. Copies of the above orders have been enclosed in the booklet containing the related documents/records.....'

7. Learned counsel submitted that aforementioned bail order in 'Karthi @ Karthikeyan's case' (hereinafter *Karthi's case* bail order for the sake of convenience) has been furnished to the detenu as part of the grounds booklet. Adverting to the bail petition as well as the bail order in the grounds booklet, learned counsel submitted



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that the aforementioned bail order dated 08.03.2018 made by the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the subjective satisfaction is impaired.

8. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases are broadly comparable.

9. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no discretion for the Trial Court in granting bail unlike bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 05.11.2022 bearing reference C.No.66/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.K.Gobi, aged 25 years, son of Thiru.Kannaiah, 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: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Coimbatore City, Coimbatore District.
- 3.The Superintendent of Prison,
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- 5.The Public Prosecutor,
High Court, Madras.



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R.SAKTHIVEL, J.,**

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