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H.C.P.No.218 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.218 of 2023

Devi

.. Petitioner

VS

1.The State of Tamil Nadu rep. By
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.The Commissioner of Police/Detaining Authority,
Coimbatore City, Coimbatore.

3.The Inspector of Police,
D1 Ramanathapuram Police Station,
Coimbatore.

4.The Superintendent of Prison,
Central Prison, Coimbatore.

.. 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 relating to the detention order dated 22.11.2022 passed by the second respondent in C.No.76/G/IS/2022 and quash the same and direct the respondents herein to produce the petitioner's son namely P.Bala, son of Palanikumar, aged about 25 years, who is presently undergoing detention in the Central Prison, Coimbatore as Drug Offender before this Court and set him at liberty forthwith..



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H.C.P.No.218 of 2023

For Petitioner : Mr.M.Vinoth
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 mother of the detenu assailing a 'preventive detention order dated 22.11.2022 bearing reference C.No.76/G/IS/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, third 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 10.02.2023 was made in the 'Admission Board' and the same reads as follows:

'Captioned Habeas Corpus Petition has been filed in this Court on 30.01.2023 inter alia assailing a detention order dated 22.11.2022 bearing reference C.No.76/G/IS/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.



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H.C.P.No.218 of 2023

2. Mother of the detenu is the petitioner.

3. Mr.C.S.Saravanan, 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) read with 20(b)(ii)(C) and 25 of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.477 of 2022 on the file of D-1 Ramanathapuram 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 there is a delay of 4 days in serving the booklet to the detenu which prevented the detenu from making an effective representation.

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.'



H.C.P.No.218 of 2023

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 two adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.477 of 2022 on the file of D-1 Ramanathapuram Police Station for the alleged offence under Section 8(c) r/w 20(b)(ii)(C) and 25 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 into the factual matrix or be detained further by facts.

5. Mr.M.Vinoth, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



H.C.P.No.218 of 2023

6. In the 'Admission Board', learned counsel for petitioner posited and projected his campaign against the impugned preventive detention order on the ground that there is a delay of four days in serving the booklet to the detenu but in the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. In support of this submission and in elaboration of this submission, learned counsel drew our attention to two portions of the grounds of impugned preventive detention order and the same read as follows:

'.... seized articles along with the arrested accused were brought to Coimbatore City D1 Ramanathapuram Police Station and a case in Coimbatore City D1 Ramanathapuram Police Station Crime No.477/2022 u/s 8(c) r/w 20(b)(ii)(C) and 25 Narcotic Drugs and Psychotropic Substances Act 1985 was registered.'

'..Further, in a case registered under similar sections of law (Coimbatore NIB CID Crime No.129/2016 u/s 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act, 1985), bail was granted to the accused Raja @ Rajendran by the Hon'ble Additional District Judge/Presiding Officer, Special Court for Essential Commodities Cases, Coimbatore in C.M.P. No.902/2016 dated 20.09.2016.....'



H.C.P.No.218 of 2023

WEB COPY

7. Learned counsel submitted that the aforementioned portions show that the aforementioned subjective satisfaction of the detaining authority has been arrived at by comparing the bail order in Raja @ Rajendran's case is intermediate quantity under Section 20(b)(ii)(B) of NDPS Act whereas the ground case is one for alleged commercial quantity under Section 20(b)(ii)(C) of NDPS Act.

8. In response to the aforementioned argument, learned Prosecutor submitted that the ground case as well as Raja @ Rajendran's case bail order are qua substance under NDPS Act and are therefore comparable.

9. We carefully considered the rival submissions and we find that the aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is impaired because the parameters and determinants for grant of discretionary relief of bail should also be taken into account while comparing a case with another case to arrive at subjective satisfaction regarding imminent possibility of detenu being enlarged on bail. In the light of Section 37 of NDPS Act, which is in the nature of a statutory bar qua bail in commercial quantity cases, we have no difficulty in saying that the statute itself recognises a distinction between 'in between



H.C.P.No.218 of 2023

quantity/intermediate quantity' under Section 20(b)(ii)(B) of NDPS Act and 'commercial quantity' under Section 20(b)(ii)(C) of NDPS Act when it comes to grant of bail and therefore comparison of one with the other to arrive at aforementioned subjective satisfaction is clearly a flawed exercise which reminds us of the age old adages 'comparing apples and oranges' and 'comparing cheese and chalk'.

10. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 22.11.2022 bearing reference C.No.76/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.P.Bala, aged 25 years, son of Thiru.Palanikumar, 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.



H.C.P.No.218 of 2023

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To

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- 3.The Inspector of Police,
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- 5.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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