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HCP No.187 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.187 of 2023

Muthulakshmi

W/o.Senthil Kumar

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Office of the Commissioner of Police
Avadi City, Chennai-600 054.
3. The Superintendent of Prison
Central Prison, Puzhal, Chennai-600 066.
4. The Inspector of Police
T-3, Korattur 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 relating to the detention order in Memo No.204/BCDFGISSV/2022 dated 29.12.2022 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set



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aside the same and direct the respondents to produce the petitioner's son Manivannan @ Yamaha Mani, son of Senthil Kumar, aged about 31 years, the detenu, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set the petitioner's son Manivannan @Yamaha Mani, son of Senthil Kumar, aged about 31 years the detenu herein at liberty.

For Petitioner : Mr.S.Senthilvel
representing Mr.C.Johnson Samuel
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 31.01.2023 inter alia assailing a detention order dated 29.12.2022 bearing reference No.204/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 of the detenu is the petitioner.

3. Mr.C.Johnson Samuel, 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



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147, 148, 341 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.633 of 2022 on the file of T-3 Korattur 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 some of the pages in the booklet furnished to the detenu are not legible 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.'

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 one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.633 of 2022 on the file of T-3 Korattur Police Station for alleged offences under Sections 147, 148, 341 and 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 representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. To be noted, in support affidavit of captioned HCP, very many points/grounds have been urged/raised but in the hearing one point came out strikingly and that one point turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail. A careful perusal of the impugned preventive detention order brings to light that the detaining authority has relied on an order dated 26.05.2021 in



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CrI.M.P.No.10485 of 2021 on the file of Principal Sessions Judge, Chennai (*Balaji's case* for the sake of convenience as Balaji and two others are petitioners in this case) to arrive at subjective satisfaction in this regard. It is articulated in paragraph No.4 of the impugned preventive detention order and the most relevant/pertinent portion of paragraph No.4 in this regard reads as follows:

'...Further, in a similar case, registered at R-3 Ashok Nagar Police Station Cr.No.59/2021 u/s.147, 148, 449, 324 and 302 IPC, the bail was granted to the accused Thiru Balaji by the Court of learned Principal Sessions, Chennai in CrI.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out on bail in T-3 Korattur Police Station Crime No.633/2022 since in similar case bail is granted by the Court after a lapse of time.....'

6. We had the benefit of perusing the bail order in *Balaji's case* and it will suffice to extract and reproduce paragraph 5 of the bail order of learned Sessions Judge in *Balaji's case*, which reads as follows:

'5. The petitioners have been in custody for the past 75 days. 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



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to the petitioners subject to condition.'

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7. The above nails the matter. **Balaji's** case bail order turns largely on then obtaining Covid-19 situation. Therefore, the comparison of **Balaji's** case with the ground case for arriving at subjective satisfaction is clearly a flawed exercise as the determinants for grant of bail in **Balaji's** case are completely different. To be noted, that ground was not available as of the date of impugned preventive detention order.

8. As the above point turns heavily on matters of record learned State Additional Public Prosecutor really does not have much of a say. Though learned Prosecutor did say that **Balaji's** case is comparable with the ground case, this point does not cut ice with us owing to the reasons set out supra.

9. The narrative thus far leaves this Bench with the considered view that the subjective satisfaction arrived at by the detaining authority with regard to imminent possibility of detenu being enlarged on bail is clearly impaired and the impugned detention order deserves to be dislodged.



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

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.12.2022 bearing reference No.204/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Manivannan @ Yamaha Mani, male, aged 31 years, son of Thiru.Senthilkumar, 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.



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

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To

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