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H.C.P.No.204 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM

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

H.C.P.No.204 of 2023

S.Mohan
S/o.Selvam

.. Petitioner

VS

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai
O/o. The Commissioner of Police
Vepery, Chennai-600 007.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai.
4. State rep. by its
The Inspector of Police
V6, Kolathur 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 entire records



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relating to the petitioner detention under Tamil Nadu Act 14 of 1982 vide detention order dated 09.01.2023 on the file of the second respondent herein made in proceedings Memo No.16/BCDFGISSSV/2023 dated 09.01.2023, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner namely, Mohan, son of Selvam, aged 30 years before this Hon'ble High Court and set the petitioner at liberty from detention, now the petitioner detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.B.Manoharan
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 09.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 02.02.2023 inter alia assailing a 'detention order dated 09.01.2023 bearing No.16/BCDFGISSSV/2023' (hereinafter 'impugned detention order' for the sake of brevity and clarity) made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.



2. *Detenu is the petitioner.*

3. *Mr.B.Manoharan, 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 341, 294(b), 323, 336, 427, 392, 397 and 506(ii) IPC in Crime No.443 of 2022 on the file of V-6 Kolathur 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 impugned detention order has been assailed inter alia on the grounds that the remand order pertaining to first adverse case has not been properly translated and the affidavit of the sponsoring authority has not been furnished to the detenu.*

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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2. The aforementioned order made in the 09.02.2023 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.

3. There are 10 adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.443 of 2022 on the file of V-6 Kolathur Police Station for alleged offences under Sections 341, 294(b), 323, 336, 427, 392, 397 and 506(ii) 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.B.Manoharan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. At the time of admission i.e., in the Admission Board, the point that remand order pertaining to first adverse case has not been properly translated and further point that affidavit of sponsoring authority has not



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been furnished to the detenu were projected. This is evident from paragraph No.5 of the Admission Board order. However, in the final hearing, Mr.B.Manoharan, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is impaired. In support of his contention, learned counsel drew our attention to a tabulation in the grounds of impugned preventive detention order wherein 10 adverse cases have been set out. Learned counsel pointed out that the Detaining Authority has noted that in all the adverse cases, investigation is pending. To be noted, the sentence 'this case is under investigation' is there in all 10 adverse cases in tabulation. Learned counsel also drew our attention to a portion of paragraph No.3 of grounds of impugned preventive detention order wherein the Detaining Authority, adverting to ground case has said '*Further, their remand period was extended till 12.01.2023. The investigation of the case is still not yet completed*'. Learned counsel submits that investigation is pending in all 10 adverse cases and in ground case but the Detaining Authority has relied on Appu's case bail order (order dated 16.10.2018 made in CrI.M.P.No.5603 of 2018 on the file of Court of the V Metropolitan Magistrate, Egmore,



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Chennai, Appu @ Chinna Appu @ Pratheep vs. State represented by

Inspector of Police) to arrive at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail. Appu's case bail order has been furnished to the detenu as part of grounds booklet at Page Nos.569 and 570 of the grounds booklet. In paragraph No.5 of Appu's case bail order, it has been noted by learned Metropolitan Magistrate, who granted bail as follows:

5. '..... on a perusal of the materials including the case diary and the report of the investigating officer, this Court finds that the investigation in this case is practically over.....'

6. Therefore, the comparison is flawed and consequence is subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is impaired.

7. Elaborating on the above submission, learned counsel pointed out that besides Appu's case bail order, the Detaining Authority has relied on bail order said to have been granted by learned Principal Sessions Judge, Chennai in CrI.M.P.No.21605 of 2019 vide Crime No.275 of 2019 on the file of G-3 Kilpauk Police Station but this bail order has not been



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furnished to the detenu as part of grounds booklet.

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8. In response to the above argument, learned Prosecutor submitted to the contrary that offences in Appu's case on one side and adverse cases and ground case qua detenu on the other side are comparable. This Court has repeatedly held that comparison is not qua alleged offences alone, it is qua determinants / parameters for grant of bail also. Therefore, considering the facts and circumstances of the case, comparison of Appu's case bail order with the case on hand is clearly flawed. However, on a demurrer even if this Appu's case point does not enure to the benefit of the petitioner, as regards the other bail order relied on by the Detaining Authority to arrive at subjective satisfaction, copy of the bail order has not been furnished to the detenu. This is a clear impairment of constitutional safeguard ingrained in Article 22(5) of Constitution of India which has statutory recognition vide Section 8(1) of Act 14 of 1982 albeit in terms of time frame. We say this, as rights of a detenu to make an effective representation is clearly impaired when the bail order relied on by the Detaining Authority to arrive at subjective satisfaction qua imminent possibility of the detenu being enlarged on bail is not furnished to the detenu.



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9. In the light of the narrative, discussion and dispositive reasoning thus far, this Court has no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

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

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 09.01.2023 bearing reference No.16/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Mohan, male, aged 30 years, son of Thiru.Selvam 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
Speaking



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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 Department
Secretariat, Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai
O/o. The Commissioner of Police
Vepery, Chennai-600 007.
3. The Superintendent of Prison
Central Prison, Puzhal
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5. The Public Prosecutor,
High Court, Madras.



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