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H.C.P.No.217 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

Coram

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

H.C.P.No.217 of 2023

Radha

.. Petitioner /
wife of detenu

VS

- 1.The Government of Tamil Nadu
Rep. By is Secretary to Government, Home
Prohibition and Excise Department
Secretariat, Chennai – 600 099
2. The District Collector
and District Magistrate
Chengalpattu District
Chengalpattu
3. The Superintendent of Police
Chengalpattu District
Chengalpattu
4. The Superintendent
Central Prison
Puzhal, Chennai – 600 066
5. The Inspector of Police
Prohibition Enforcement Wing
Madhuranthangam
Chengalpattu 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



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records relating to the proceedings of the 2nd respondent in CPT No.09/2023 dated 21.01.2023 against the petitioner's husband Boobalan, male, aged about 44 years, son of Chokkalingam and quash the same and consequently direct the respondents herein to produce the detenu who is detained under the Tamil Nadu Act 14 of 1982 currently confined at Central Prison, Puzhal, Chennai – 600 066 before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.P.Anbazhagan

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 10.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 03.02.2023 inter alia assailing a detention order dated 21.01.2023 bearing reference CPT No.09/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Mr.P.Anbazhagan, 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 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act, 1937 read with Sections 6 and 11 of



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Tamil Nadu Rectified Spirit Rules, 2000 (Transporting) in Crime No.2 of 2023 on the file of Madhuranthagam Prohibition Enforcement Wing.

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 the Detaining Authority has failed to furnish the documents relied on in the detention order 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 10.02.2023 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 two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.02 of 2023 on the file of Madhuranthagam Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu



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Prohibition Act, 1937 read with Rules 6 and 11 of Tamil Nadu Rectified Spirit Rules, 2000 (Transporting). 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. As would be evident from the Admission Board order dated 10.02.2023, at the time of admission, learned counsel for HCP petitioner projected the point that the detaining authority has failed to furnish the documents relied on in the impugned preventive detention order but in the Final Hearing Board today, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. [Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:](#)



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'5.....In Prohibition Enforcement Wing, Mamallapuram Cr.No.1688/2020 u/s 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting) against the similar accused Raji, S/o.Murugan was released on bail through Principal District and Sessions Court, Chengalpattu in CrI.M.P. No.2698/2020 on 25.08.2020;

Hence I infer that there is a real possibility of his coming out on bail if he applied bail petition in the above ground case since in similar cases, bails are granted by the court after lapse of time.....'

6. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on Raji's case bail order being bail order dated 25.08.2020 in CrI.M.P. No.2698 of 2020 on the file of Principal Sessions Judge, Kancheepuram at Chengalpattu. Learned counsel adverting to the bail order in Raji's case submitted that the bail order was made in view of directions of Hon'ble Supreme Court in Suo Motu W.P. (Civil) No.1 of 2020 owing to the 'Corona virus Pandemic and Consequent lock down' which shall be referred to as 'Covid-19 situation' which cannot be made applicable to the ground case or the adverse case qua bail as on the date of impugned preventive detention order Covid 19 situation had faded into past.



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7. In response to the above argument, learned Prosecutor submitted to the contrary and said that the two orders are broadly comparable.

8. We had the benefit of perusing the bail order in Raji's case and we find that submission made by learned counsel for petitioner is acceptable. The reason is, a portion of the bail order of learned Sessions Judge in Raji's case reads as follows:

*'.....In furtherance to the directions of the Hon'ble Chief Justice at High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in Suo Motu W.P (Civil) No.1 of 2020 **In Re: Contagion of Covid 19 virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi** and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible. Keeping this in view and also taking note of the duration of custody, facts and circumstances of the case the petitioner/accused is ordered to be released on bail forthwith...'*

9. It is clear that Raji's case bail order is one where the bail has been granted primarily owing to the then obtaining Covid-19



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situation and orders of Hon'ble Supreme Court in this regard.

Therefore, taking Raji's case bail order as a benchmark for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. Therefore, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.01.2023 bearing reference C.P.T.No.09 of 2023 made by the second respondent is set aside and the detenu Thiru.Boobalan, aged 44 years, son of Thiru.Chokkalingam, 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.)
10.07.2023

Index : Yes

Neutral Citation : Yes

mmi

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

To

1. The Secretary to Government, Home
Prohibition and Excise Department
Secretariat, Chennai – 600 099



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2. The District Collector
and District Magistrate
Chengalpattu District
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Chengalpattu District
6. The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
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R.SAKTHIVEL, J.,**

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