



WEB COPY



H.C.P.No.212 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.212 of 2023

Ashika Fathima

.. Petitioner

Vs

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.

2. The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66.

4.The Inspector of Police,
Law and Order,
B1 North Beach 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 in connection with the order of detention passed by the second respondent dated 12.01.2023 in Memo No.17/BCDFGISSSV/2023 against the petitioner's husband Musthafa, male, aged 32 years, S/o.Mahaboob Basha, who is confined at Central Prison, Puzhal,



H.C.P.No.212 of 2023

Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
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 03.02.2023 inter alia assailing a 'detention order dated 12.01.2023 bearing No.17/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. Wife of the detenu is the petitioner.

3. Mr.S.Senthilvel, 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 9(A), 22(c), 8(c) r/w 20(b)(ii)A of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.336 of 2022 on the file of B-1 North Beach 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-



WEB COPY



H.C.P.No.212 of 2023

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 there is inordinate delay of more than three months in passing the detention order, the arrest intimation was sent through SMS to the detenu's brother and there is variation between the grounds of detention in English and Tamil.

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 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 three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.336 of 2022 on the file of B1 North Beach Police Station for the alleged offences under Sections 9(A), 22(c), 8(c) r/w 20(b)(ii) A of NDPS Act. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve



H.C.P.No.212 of 2023

into the factual matrix or be detained further by facts.

WEB COPY

4. Mr.S.Senthilvel, learned 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 09.02.2023 (more particularly paragraph 5 thereat) at the time of admission learned counsel projected the points that there is inordinate delay in making the impugned preventive detention order, arrest intimation was sent through SMS and there is variation between the grounds of detention in English and Tamil but in the final hearing today, learned counsel for petitioner predicated his campaign against the impugned preventive order on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this point, learned counsel drew the attention of this Court to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'...The sponsoring authority has stated that he



H.C.P.No.212 of 2023

came understand that the relatives of Thiru Musthafa are taking action to take him out on bail by filing bail application in B1 North Beach Police Station Cr.Nos.284/2022 and 309/2022 before the appropriate court. Hence I infer that it is very likely of his coming out on bail in B1 North Beach Police Station in Cr.No.336/2022 and also there is a real possibility of his coming out on bail by filing bail applications in B1 North Beach Police Station Cr.Nos.284/2022 and 309/2022 before the appropriate court...'

6. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that no statement from the relatives of the detenu has been recorded and no statement has been furnished to the detenu as part of the grounds booklet.

7. The aforementioned point turns on records. We had the benefit of perusing the grounds booklet and found that there is no statement from the relatives of detenu. However, learned Prosecutor drew our attention to special report from sponsoring authority which is at page No.167 of the grounds booklet. Learned Prosecutor submitted that the special report from the sponsoring authority shows that after



H.C.P.No.212 of 2023

dismissal of bail petition in the trial Court, another bail petition has been filed in the Madras High Court (this Court).

8. We carefully considered the rival submissions. We find that the special report does not contain a date. The signature of the sponsoring authority also does not contain a date. Therefore, it is not clear as to whether the special report was prior to impugned preventive detention order or after the impugned preventive detention order. The benefit of doubt has to be given to the detenu. In any event, a special report from the sponsoring authority can only be a self-serving document and the bail petition said to be pending in this Court adverted to in the special report ought to have been given to the detenu as part of the grounds booklet. This has also not been done. Therefore, we have no difficulty in persuading ourselves to say that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. If subjective satisfaction is impaired, the sequitur is, the impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.01.2023 bearing reference

Page Nos.6/8



H.C.P.No.212 of 2023

No.17/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Musthafa, aged 32 years, Son of Thiru.Mahaboob Basha, 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 Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66.
- 4.The Inspector of Police,
Law and Order, B1 North Beach Police Station,
Chennai.
- 5.The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.212 of 2023

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

mmi

H.C.P.No.212 of 2023

10.07.2023

Page Nos.8/8