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H.C.P.No.255 of 2023

7IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

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

H.C.P.No.255 of 2023

N.Murugaboopathi

..

Petitioner

Vs.

1. State of Tamil Nadu, represented by
The Additional Chief Secretary to Government
Department of Home, Prohibition and Excise
Secretariat, Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Office of the Commissioner of Police
Coimbatore City
Coimbatore District
3. The Inspector of Police, Law and Order
B-2 R.S.Puram Police Station, Coimbatore City
Coimbatore District.
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
pertaining to the order of detention passed by the second respondent

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against N.Murugaboopathi, male, aged 33 years, son of Nallasivam, residing at Door No.46/47, J.J.Nagar, Edayarpalayam, Coimbatore District as a DRUG OFFENDER as contemplated under Section 2 (e) of Act 14 and detained under Act 14/82 by order of the second respondent issued in C.No.72/G/IS/2022 dated 19.11.2022 set aside the impugned order of detention passed under the Tamil Nadu Act 14/1982 and direct the respondents to produce the body of the detenu namely N.Murugaboopathi, male, aged 33 years, son of Nallasivam, now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.H.Maruthi Raj
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 the detenu assailing a 'preventive detention order dated 19.11.2022 bearing reference C.No.72/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.



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2. Impugned detention order has been made under '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] on the premise that the detenu is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.421 of 2022 on the file of B-2 R.S.Puram Police Station for alleged offences under Section 8(c) read with Section 20 (b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' ['NDPS Act' for the sake of brevity]. 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.



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4. Mr..H.Maruthi Raj, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though very many grounds have been raised in the support affidavit qua captioned HCP, in the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 6 of the grounds of detention and the relevant portion reads as follows:

'Further in Coimbatore City, B-1 Bazaar Police Station Crime No.12/2018 u/s 8(c) r/w 20(b)(ii)(B) Narcotic Drugs and Psychotropic Substances Act 1985 (which is registered under similar sections of law), bail was granted to accused A.Karthikeyan @ Karthi by the Court of Hon'ble Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore in CMP No.151/2018 dated 08.03.2018. Copies of the above orders have been enclosed in the booklet containing the related documents/records.....'



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6. Learned counsel submitted that aforementioned bail order in 'Karthi @ Karthikeyan's case' (hereinafter *Karthi's case* bail order for the sake of convenience) has been furnished to the detenu as part of the grounds booklet. Adverting to the bail petition as well as the bail order in the grounds booklet, learned counsel submitted that the aforementioned bail order dated 08.03.2018 made by the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the subjective satisfaction is impaired.

7. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases are broadly comparable.

8. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there



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is no discretion for the Trial Court in granting bail unlike bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.11.2022 bearing reference C.No.72/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.N.Murugaboopathi, male, aged 33 years, son of Thiru. Nallasivam 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.)
26.06.2023

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.

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To

1. The Additional Chief Secretary to Government
Department of Home, Prohibition and Excise
Secretariat, Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Office of the Commissioner of Police
Coimbatore City
Coimbatore District
3. The Inspector of Police, Law and Order
B-2 R.S.Puram Police Station, Coimbatore City
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4. The Superintendent of Prison,
Central Prison, Coimbatore.
5. The Public Prosecutor,
High Court, Madras.



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

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