



H.C.P.No.365 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.365 of 2023

Anandhabharathi

.. Petitioner

Vs

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The District Collector and District Magistrate
The office of District Collector and District Magistrate
Kancheepuram District
3. The Superintendent of Police
Kancheepuram District
Kancheepuram
4. The Superintendent
Central Prison, Puzhal
Chennai

Page Nos.1/9



H.C.P.No.365 of 2023

5. Inspector of Police
Sunguvarchatram Police Station
Kancheepuram 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 records in connection with the order of detention passed by the 2nd respondent dated 23.08.2022 in Rc No.12777/2022/M6-D.O.No.34/2022 and set aside the same and consequently direct the respondents to produce the petitioner's son / detenu Dhanush, male, aged 23, son of Muralikrishnan before this Court and set him at liberty, now detained in Central Prison, Puzhal.

For Petitioner	:	Mr.R.Dinesh Kumar for Mr.Sairam Ganapathi N
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' ['HCP' for the sake of brevity] was listed in the Admission Board on 15.02.2023, this Court made the following order:



H.C.P.No.365 of 2023

WEB COPY

H.C.P.No.365 of 2023

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 13.02.2023 *inter alia* assailing a detention order dated 23.08.2022 bearing reference Rc.No.12777/2022/M6-D.O.No.34/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, mother of the detenu is the petitioner.

3. Mr.N.Sairam Ganapathi, 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 294(b), 323, 392, 397, 307, 427 and 506(ii) of 'Indian Penal Code, 1860 Act 45 of 1860' ['IPC' for brevity] in Crime No.420 of 2022 on the file of Sunguvarchatiram Police Station.



WEB COPY



H.C.P.No.365 of 2023

H.C.P.No.365 of 2023

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, Shun-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 though no bail application was filed in the ground case and in respect of adverse cases bail applications were dismissed, the detaining authority arrived at a subjective satisfaction that there is an imminent possibility of the detenu coming out on bail since in similar case bail was granted, which shows non-application of mind.

6. *Prima facie* case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

Page Nos.4/9



WEB COPY



H.C.P.No.365 of 2023

H.C.P.No.365 of 2023

7. Mr.R.Muniyapperaaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

[M.S.J.] [M.N.K.J.]

15.03.2023

EPD

2. The aforementioned order made in the Admission Board captures essential facts / features and therefore, we are not setting out the same again. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.

3. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel projected the point that subjective satisfaction arrived at qua imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 5 of the grounds of



H.C.P.No.365 of 2023

WEB COPY

impugned preventive detention order, which reads as follows:

'...In Sriperumbudur PS Cr.No.187/2018 u/s.294(b), 341, 323, 397, 506(ii), 307 IPC similar accused Thriu Dinesh @ Dineshkumar S/o.Sekar was released on bail through the District Sessions Court-II, Kancheepuram in C.M.P.No.1584/2018 dated 04.05.2018;

In the same way there is a real possibility for him of being released on bail in the ground case also.....'

4. The aforementioned Dinesh's case bail order has been furnished to the detenu as part of the grounds booklet and we had the benefit of perusing the same. Adverting to the Dinesh's case bail order in the grounds booklet, learned counsel submitted that one important alleged offence, namely Section 392 is not there in the Dinesh case and therefore, the comparison is bad.

5. Learned Prosecutor submitted to the contrary and said that several other offences are similar.

6. We carefully considered the rival submissions. Considering the facts and circumstances of the case on hand, we find that Section 392 of IPC which pertains to punishment for robbery is very critical. To be noted, the term 'Robbery' is defined in Section 390 IPC. Therefore, on the facts and



H.C.P.No.365 of 2023

WEB COPY

circumstances of the case on hand, we find that the comparison of Dinesh's case bail order with the ground case for arriving at the subjective satisfaction qua imminent possibility of detenu being enlarged on bail is bad and this has vitiated the impugned preventive detention order and left liable for being dislodged.

7. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 23.08.2022 bearing reference Rc.No.12777/2022/M6-D.O.No.34/2022 made by the second respondent is set aside and the detenu Thiru.Dhanush, male, aged 23 years, son of Thiru.Muralikrishnan 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.)

07.08.2023

Index : No

Neutral Citation : No

gpa

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

Page Nos.7/9



H.C.P.No.365 of 2023

WEB COPY

To

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The District Collector and District Magistrate
The office of District Collector and District Magistrate
Kancheepuram District
3. The Superintendent of Police
Kancheepuram District
Kancheepuram
4. The Superintendent
Central Prison, Puzhal
Chennai
5. The Inspector of Police
Sunguvarchatram Police Station
Kancheepuram District
6. The Public Prosecutor
Madras High Court
Chennai



WEB COPY



H.C.P.No.365 of 2023

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

gpa

H.C.P.No.365 of 2023

07.08.2023

Page Nos.9/9