



H.C.P.No.335 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

H.C.P.No.335 of 2023

Y.Yasmin

.. Petitioner /
Sister of the detenu

Vs.

1. State of Tamil Nadu
The Secretary
Prohibition & Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Tambaram City
Office of the Commissioner of Police
Sholinganallur
Chennai – 600 119
3. The Superintendent
Central Prison
Puzhal, Chennai
4. The Inspector of Police
T-17 Perumbakkam Police Station
Perumbakkam
Chennai

... Respondents

Page Nos.1/10



H.C.P.No.335 of 2023

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 relating to the detention order Memo No.198/BBCDFGISSSV/2022 dated 17.11.2022 passed by the 2nd respondent under Tamil Nadu Act 14 of 1982 and quash the same and direct the respondent to produce the detenu Farook Sheikh @ Farook, son of Yusuf Sheik, male, aged 24 years, now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.S.Saranraj
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the matter came up for admission on 07.03.2023, this Bench made an order and a scanned reproduction of the same is as follows:



WEB COPY



H.C.P.No.335 of 2023

H.C.P.No.335 of 2023

H.C.P.No.335 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 14.02.2023 *inter alia* assailing a detention order dated 17.11.2022 bearing reference BCDF(GISSSV.No.198/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2.Sister of the detenu is the petitioner.

3.Mr.S.Vellidoss, learned counsel representing counsel on record for habeas corpus petitioner is before us. Learned counsel submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 336, 427, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.204 of 2022 on the file of T-17 Perumbakkam Police Station.

Page Nos.1/4



WEB COPY



H.C.P.No.335 of 2023

H.C.P.No.335 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, 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.Earlier proceedings made in the previous listing on 06.03.2023 reads as follows:

'Mr.S.Saranraj, learned counsel on record for the petitioner submits that grounds of detention was not served on the detenu within five days but learned counsel is unable to give the provision of law readily. Learned counsel requests for a short accommodation to acquaint himself with the facts of the case.

2.List tomorrow. List on 07.03.2023.'

6.Adverting to the aforesaid proceedings, learned counsel submits that his colleague Mr.S.Saranraj represented incorrectly that the grounds



WEB COPY



H.C.P.No.335 of 2023

H.C.P.No.335 of 2023

of detention has not been served on the detenu within five days as mandated under the provisions of the Act 14 of 1982.

7.The detention order has been assailed *inter alia* on the ground that the Detaining Authority has not properly intimated to the family members of the detenu about his detention.

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

9.Mr.R.Muniyapparaj, 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.]

07.03.2023

cse



H.C.P.No.335 of 2023

2. Mr.S.Saranraj, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

3. Though in the admission board, the point that Detaining Authority had not properly informed the family members about the detention was projected, in the final hearing today, learned counsel predicated his campaign against the impugned preventive order on the ground that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is impaired as the subjective satisfaction has been arrived at by comparing the case on hand with another case which is completely dissimilar as in the other case the prosecutor himself had submitted that there is no bad antecedents for the petitioner thereat.

4. Elaborating on the above point, adverting to the impugned preventive detention order, learned counsel submitted that the aforementioned subjective satisfaction has been arrived at by the Detaining Authority by comparing the ground case with a bail order dated 18.10.2019



H.C.P.No.335 of 2023

in CrI.M.P.No.21605/2019 vide Crime No.145 of 2018 on the file of G-3

WEB COPY

Kilpauk Police Station ('Arun @ Arunkumar's case' for the sake of convenience). Arun @ Arunkumar'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. A careful perusal of Arun @ Arunkumar's case and more particularly paragraph 4 thereat, makes it clear that there being no previous case against Arun @ Arunkumar has weighed in the mind of the learned Sessions Judge in gravitating towards exercising discretion in favour of grant of bail. In complete contradistinction, in the case on hand there are two adverse cases even according to the impugned preventive detention order.

5. Learned Prosecutor in his submission to the contrary, argued that Arun @ Arunkumar's case and the ground case are comparable as the offences are broadly akin to each other. We are unable to agree with the learned Prosecutor as the parameters and determinants for grant of discretionary relief of bail have to be compared with another case where the parameters and determinants are also comparable.

6. In the case on hand, we find Arun @ Arunkumar's case and ground



H.C.P.No.335 of 2023

case are dissimilar owing to reasons delineated supra. This means that the aforementioned subjective satisfaction arrived at by the Detaining Authority is impaired and therefore the impugned preventive detention order deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.11.2022 bearing reference BCDFGISSSV No.198 of 2022 made by the second respondent is set aside and the detenu Thiru.Farook Sheikh @ Farook, aged 24, son of Thiru.Yusuf Sheikh, 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.)

14.06.2023

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes /No

gpa

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

To

Page Nos.8/10



H.C.P.No.335 of 2023

WEB COPY

1. The Secretary
Prohibition & Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Tambaram City
Office of the Commissioner of Police
Sholinganallur
Chennai – 600 119
3. The Superintendent
Central Prison
Puzhal, Chennai
4. The Inspector of Police
T-17 Perumbakkam Police Station
Perumbakkam
Chennai
5. The Public Prosecutor
Madras High Court, Chennai



WEB COPY



H.C.P.No.335 of 2023

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

gpa

H.C.P.No.335 of 2023

14.06.2023

Page Nos.10/10