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H.C.P.No.333 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM

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

H.C.P.NO.333 OF 2023

Monika

.. Petitioner

VS

1.The Additional Chief Secretary to Government
Home Prohibition and Excise Department
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police
Greater Chennai.

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

4.The Inspector of Police
Law & Order
V-6, Kolathur Police Station
Chennai.

.. Respondents

PRAYER: 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



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dated 09.01.2023 in Memo No.14/BCDFGISSSV/2023 against the petitioner's husband Manikandan @ Mani, aged 26 years, S/o.Thanikachalam, who is confined at Central Prison, Puzhal, 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 07.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 15.02.2023 inter alia assailing a detention order dated 09.01.2023 bearing reference No.14/BCDFGISSSV/2023 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 341, 294(b), 323, 336, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.443 of 2022 on the file of V-6 Kolathur Police Station.

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.The detention order has been assailed inter alia on the ground that remand order furnished in the booklet provided to the detenu is in English and the same was not translated in Tamil but the detenu is conversant only with Tamil which prevented him from making an effective representation.



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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 07.03.2023 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 ten adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.443 of 2022 on the file of V-6 Kolathur Police Station for alleged offences under Sections 341, 294(b), 323, 336, 427, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.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.In the support affidavit qua captioned HCP, several points/grounds have been raised/urged but in the final hearing today, learned counsel for petitioner projected his argument 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 4 of the grounds of impugned preventive detention order which reads as follows:

'4.....Further, it is pertinent to note that in a similar case registered at G-3 Kilpauk Police Station Crime No.275/2019 under Sections 341, 294(b), 323, 336, 397, 427 and 506(ii) of IPC, the bail was granted to the some other accused by the Court of learned Principal Sessions at Chennai in Crl.M.P.No.21605/2019. Hence I infer that there is a real possibility of his coming out on



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bail by filing bail application for M-1 Madhavaram Police Station Crime No.669/2022, K-7 I.C.F. Police Station Crime No.67/2021, V-4 Rajamangalam Police Station Crime No.902/2021, 938/2021, 541/2022, 741/2022, V-5 Thirumangalam Police Station Crime No.293/2022, 294/2022, 340/2022 and V-6 Kolathur Police Station Crime Nos.441/2022 & 443/2022 before the appropriate court, since, in a similarly placed cases, the bail was granted by the courts, after a lapse of time...'

6.We had the benefit of perusing the aforementioned bail order [we shall refer to the same as '*Arun's case*' as Arun @ Arunkumar is the petitioner therein]. In paragraph 5 of *Arun's case* bail order, it is stated as follows:

'5...No previous case is reported as against the petitioner....'

7.Adverting to the aforementioned portion of *Arun's case* bail order, learned counsel for petitioner submits that even according to the impugned preventive detention order, there are as many as ten adverse cases in the case on hand and therefore, the comparison is bad. We have no



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hesitation in accepting this submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority is impaired as comparison should be qua determinants/parameters for grant of bail too. The sequitur is, impugned preventive detention order deserves to be dislodged.

8.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 09.01.2023 bearing reference Memo No.14/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru. Manikandan @ Mani, aged 26 years, son of Thiru. Thanikachalam, 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.)

17.07.2023

Index : Yes/No

Neutral Citation : Yes/No

TK

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



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To

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High Court, Madras.



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