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H.C.P.No.293 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.293 of 2023

Divya

W/o.Siva Kumar @ Mechanic Siva

.. Petitioner/
wife of the detenu

Vs.

1. The Government of Tamil Nadu
Rep. By its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009
2. The Commissioner of Police
Tambaram City
Tambaram
3. The Superintendent
Central Prison
Puzhal
Chennai – 600 066
4. The Inspector of Police,
J-10, Chemmenchery Police Station
Chennai

..Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, calling for records relating to the proceedings of the 2nd respondent in BCDFGISSSV No.116 of 2022 dated 06.08.2022 against the petitioner's husband Siva Kumar @ Mechanic Siva, male, aged about 25, son of Kathirvel and quash the same and consequently direct the respondents herein to produce the detenu who is detained under the Tamil Nadu Act 14 of 1982 currently confined in the Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.P.Surendran
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 27.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 20.02.2023 inter alia assailing a detention order dated



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06.08.2022 bearing reference BCDFGISSSV No.116/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2.Wife of the detenu is the petitioner.

3.Mr.P.Surendran, 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), 341, 323, 392, 336 r/w. 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.176 of 2022 on the file of J-10 Chemmancherry 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 the Detaining Authority has not properly intimated to the family members of the detenu about his detention.

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



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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 27.02.2023 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 two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.176 of 2022 on the file of J-10 Chemmanchery Police Station for alleged offences under Sections 294(b), 341, 323, 392, 336 read with 397 and 506(ii) of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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



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5. At the time of admission i.e., in the admission board, the point that the Detaining Authority has not properly intimated the family members about the detention was urged but in the final hearing today, learned counsel posited 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. Learned counsel advertent to the grounds of detention qua impugned preventive detention order and the grounds booklet submitted that Detaining Authority has relied on an order dated 21.06.2022 made in Cr.M.P.No.1191 of 2022 by Judicial Magistrate II, Alandur [we shall refer to this case as 'Murugan case' for the sake of convenience] for arriving at the subjective satisfaction.

6. We had the benefit of perusing the Murugan's case bail order which is at Page 355 of the grounds booklet. A careful perusal of Murugan's case bail order brings to light that the learned Magistrate has granted bail primarily owing to Covid-19 pandemic situation. This is incorrect because Covid-19 pandemic situation is from 15.03.2020 to 28.02.2022 as per the orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020. At best, there can be three more months added to it but that also



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elapsed on 31.05.2022. We are not testing the correctness of bail order in Murugan's case but suffice to say that subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which in turn has incorrectly applied the Covid-19 situation, has impaired the subjective satisfaction. The sequitur is impugned preventive detention order deserves to be dislodged.

7. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 06.08.2022 bearing reference BCDFGISSSV No.116/2022 made by the second respondent is set aside and the detenu Thiru.Sivakumar @ Mechanic Siva, aged about 25, son of Thiru.Kathirvel, years 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.)

28.06.2023

Index : Yes / No

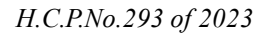
Speaking / Non-speaking

Neutral Citation : Yes / No

gpa

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

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and
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