



WEB COPY



H.C.P.No.310 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM

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

H.C.P.No.310 of 2023

Devi

.. Petitioner

Vs

1.State of Tamil Nadu rep. By the Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -9.

2.The Commissioner of Police/Detaining Authority,
City Police Office, Huzur Road,
Coimbatore City, Coimbatore – 18.

3.The Superintendent of Prison,
Central Prison, Coimbatore.

4.The Inspector of Police,
E2 Peelamedu Police Station,
Coimbatore 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
relating to the detention order vide Memo C.No.10/G/IS/2023 dated
11.02.2023 passed by the second respondent and quash the same and

Page Nos.1/8



H.C.P.No.310 of 2023

direct the respondents herein to produce the petitioner's husband namely R.Gobi, S/o.Raju, aged 40 years, (who is presently undergoing detention in the Central Prison, Coimbatore) before this Court and set him at liberty.

For Petitioner : Mr.P.Narayana Prasadh
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 06.03.2023, this Court made the following order:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 02.03.2023.

2. Mr.P.Narayana Prasadh, learned counsel on record for the petitioner adverting to earlier proceedings dated 02.03.2023 submits that he has now been put on notice and he is aware that Article 22(1) of Constitution of India would not apply to preventive detention owing to Article 22(3)(b) of Constitution of India. However, learned counsel submits that his argument is now predicated under Article 22(5) of Constitution of India.

3. Captioned Habeas Corpus Petition has been filed in this Court on 20.02.2023 inter alia assailing a detention order dated 11.02.2023 bearing reference C.No.10/G/IS/2023 made



WEB COPY



H.C.P.No.310 of 2023

by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

4. Wife of the detenu is the petitioner.

5. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 406, 420 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.46 of 2023 on the file of E-2 Peelamedu Police Station.

6. 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].

7. The detention order has been assailed inter alia on the ground that some of the pages in the grounds of detention are not legible which prevented the detenu from making an effective representation.

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. '

2. The aforementioned order made in the 06.03.2023 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.



H.C.P.No.310 of 2023

WEB COPY

3. There are four adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.46 of 2023 on the file of E-2 Peelamedu Police Station for alleged offences under Sections 406, 420 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.Narayana Prasadh, 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 Admission Board (as would be evident from paragraph 7 of the admission board order dated 06.03.2023) the point that some of the pages in the grounds booklet are not legible was projected but in the Final Hearing Board 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,



H.C.P.No.310 of 2023

learned counsel drew our attention to a portion of paragraph 9 of the grounds of impugned preventive detention order, which reads as follows:

'9.....However, in the first adverse case registered under similar nature of offence bail was granted to the accused R.Gobi by the Hon'ble Judicial Magistrate No.V, Coimbatore in C.M.P.No.145/2023 dated 04.01.2023. Copy of the above order has been enclosed in the booklet containing the related documents/records.....'

6. We had the benefit of perusing the aforementioned bail order [we shall refer to the same as '*said bail order*'] at pages 30 to 32 of the grounds booklet. One paragraph in *said bail order* reads as follows:

'On perusal of records, this Court finds that the petitioner/accused is already in judicial custody for the past 8 days. Considering the rival claims and considering the nature of accusation against the petitioner and in view of the pendency of CC 472 of 2019 for the very same alleged offense, this Court is of the opinion that further detention is not necessary as critical stage of investigation would be completed. Hence, this Court finds justification to



H.C.P.No.310 of 2023

release the petitioner in the interest of justice.'

WEB COPY

7. Adverting to the aforementioned portion of *said bail order*, learned counsel for HCP petitioner submits that the learned Magistrate has granted bail by exercising his discretion in favour of acceding to the bail plea as another case has been registered against the accused for the same offence. This is a technical point. Such a technical point is not available qua ground case. Therefore, comparing *said bail order* with the ground case to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. Therefore, we have no hesitation in accepting the submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority is impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 11.02.2023 bearing reference C.No.10/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.R.Gobi, aged 40 years, Son of Thiru.Raju, is directed to be set at liberty forthwith, if not required in connection with any



H.C.P.No.310 of 2023

other case / cases. There shall be no order as to costs.

WEB COPY

(M.S.,J.) (R.S.V.,J.)
24.07.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai -9.
- 2.The Commissioner of Police/Detaining Authority,
City Police Office, Huzur Road,
Coimbatore City, Coimbatore – 18.
- 3.The Superintendent of Prison,
Central Prison, Coimbatore.
- 4.The Inspector of Police,
E2 Peelamedu Police Station,
Coimbatore District.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.310 of 2023

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

mmi

H.C.P.No.310 of 2023

24.07.2023

Page Nos.8/8