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H.C.P.No.320 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

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

H.C.P.NO.320 OF 2023

Alamelu

.. Petitioner

Vs.

- 1.State of Tamil Nadu
Rep. By the Secretary to Government
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George,
Chennai.
- 2.The District Collector and
District Magistrate
Chengalpattu District,
Chengalpattu.
- 3.The Superintendent of Police
Chengalpattu District,
Chengalpattu.
- 4.The Superintendent of Prison
Central Prison, Puzhal – II,
Puzhal, Chennai.



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5. The Inspector of Police
Chengalpattu Town Police Station
Chengalpattu.

.. Respondents

PRAYER: 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 the records in CPT No.08/BCDFGISSSV/2023 passed by the 2nd respondent on 21.01.2023 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondent to produce petitioner son Ashok, Son of Kumar, aged about 27 years before this Court who now detained in Central Prison, Puzhal-II and set him liberty.

For Petitioner : Mr.A.Elumalai

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 02.03.2023, this Court made the following order:



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'Captioned Habeas Corpus Petition has been filed in this Court on 21.02.2023 inter alia assailing a detention order dated 21.01.2023 bearing reference CPT No.08/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2.Mother of the detenu is the petitioner.

3.Mr.A.Elumalai, 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 offence under Sections 392, 397, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.02 of 2023 on the file of Chengalpattu Town 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, Sandoffenders, 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 arrest intimation was not properly conveyed to the family members of the detenu.

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 02.03.2023 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 three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned



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preventive detention order is Crime No.02 of 2023 on the file of Chengalpattu Town Police Station for alleged offences under Sections 392, 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.A.Elumalai, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.At the time of admission i.e., in the admission Board, the point that the arrest intimation was not properly conveyed to the family members of the detenu 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 adverted to the grounds of detention qua impugned preventive detention order and the grounds booklet submitted that Detaining Authority has relied on an order dated 27.03.2020 made in



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C.M.P.No.719 of 2020 by District Sessions Court– II, Kancheepuram [we shall refer to this case as 'Jeeva's case' for the sake of convenience] for arriving at subjective satisfaction and the relevant portion reads as follows:

'5... In Siva Kanchi Police Station Cr.No.25/2020 u/s.392, 397 IPC other similar accused Thiru. Jeeva @ Periya Kayilan S/o. Elumalai was released on bail through District Sessions Court – II, Kancheepuram in C.M.P.No.719/2020 on 27.03.2020;

In the same way there is a real possibility on the part of above accused also will be released on bail in the above case... '

6.We had the benefit of perusing the Jeeva's case bail order which is at Page 297 of the grounds booklet. A careful perusal of Jeeva's case bail order brings to light that the learned Sessions Judge has granted bail primarily owing to Covid-19 pandemic situation. This comparison 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



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of 2020. Therefore, subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which granted bail owing to the then prevalent Covid-19 situation is impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.

7.Apropos, the further sequitur is, captioned HCP is allowed. Impugned detention order dated 21.01.2023 bearing reference CPT No.08/2023 made by the second respondent is set aside and the detenu Thiru.Ashok, aged 27 years, son of Thiru.Kumar, 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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Government of Tamil Nadu
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Chengalpattu.
- 6.The Public Prosecutor
High Court, Madras.



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R.SAKTHIVEL, J.

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