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H.C.P.No.308 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.308 of 2023

Ramya
W/o.Madhavan

.. Petitioner / Detenue

Vs.

1.The Additional Chief Secretary to Government,
Home and Prohibition, Excise Department,
Fort St. George,
Chennai – 9.

2.The Commissioner of Police
Greater Chennai,
Office of the Commissioner of Police,
(Goondas Section),
Vepery, Chennai.

3.The Superintendent,
Special Prison for Women,
Central Prisons,
Puzhal, Chennai.

4.The Inspector of Police,
Team-20, EDF-III,
Central Crime Branch-I,
Vepery, Chennai.

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent in Detention order vide D.O.No.29/BCDFGISSSV/2023, dated 03.02.2023 against the petitioner, named Ramya, aged about 35 years, wife of Madhavan, confined at Special Prison for Women, Puzhal, Chennai and set aside the same, consequently direct the respondents to produce the petitioner named Ramya, aged about 35 years, wife of Madhavan before this Court and set her at liberty.

For Petitioner : Mr.R.Vivekananthan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

This order will now dispose of the captioned matter.

2. When the captioned matter was listed in the admission board on 01.03.2023, the following order was made by this Court.



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M.SUNDAR, J

and

M.NIRMAL KUMAR, J

(The Order of the Court was made by M.Sundar, J)

Captioned Habeas Corpus Petition (for brevity, THCP) has been filed in this Court on 29.02.2023 *inter-alia* assailing a detention order dated 03.02.2023 bearing Reference Number in No.29/BCDFG1585V/2023 made by the 'second respondent' (hereinafter called as 'Detaining Authority' for the sake of convenience and clarity). It be noted, fourth respondent is the Sponsoring Authority.

2. The detenu is the petitioner.

3. Mr.R.Vivekamanthan, learned counsel on record for habeas corpus petitioner, is before us. Learned counsel for the petitioner submits that the ground case *qua* the detenu, is for the alleged offences under Sections 406, 420 and 506 (Part-I) read with 34 of the Indian Penal Code (for brevity, 'IPC') in Crime No.261 of 2002 on the file of the 'Team-XX, F.DF-III, Central Crime Branch-I, Greater Chennai Police.

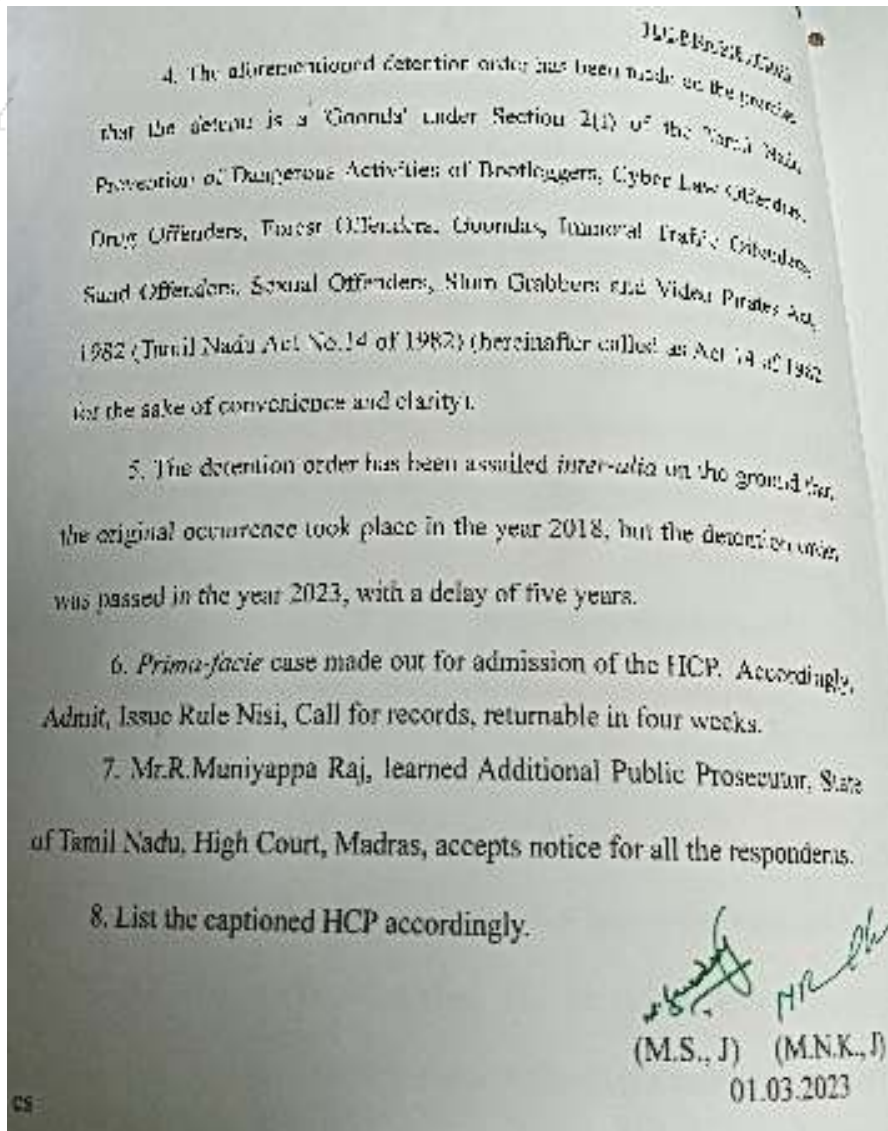
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3. The aforementioned order / proceedings shall now be read as an integral part and parcel of this order. This means that the short forms and short references for convenience used in the earlier order dated 01.03.2023 will continue to be used in the instant order also.

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4. Mr.R.Vivekananthan, learned counsel for petitioner, in the admission board projected the argument that the occurrence qua ground case is in the year 2018 but impugned preventive detention order has been made only in 2023 but in the final hearing Board, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed / impaired. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows:

'... In a similar case, registered in Central Crime Branch Cr.No.09/2022 u/s 406, 420 IPC, bail was granted by the Special Metropolitan Magistrate for the exclusive trial of CCB cases (relating to cheating cases in Chennai) and CB CID Metro cases, Chennai, in CrI.M.P.No.6800/2022. Hence, I infer that there is real possibility of her coming out on bail by filing another bail application in Central Crime Branch-I, Cr.No.261/2022 by filing another bail application and bail application for Central Crime Branch-I Cr.No.04/2023 case before the appropriate court, since, in a similar case, bail was granted by the courts after a lapse of time. ...'



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5. Adverting to the aforesaid portion of the grounds of impugned preventive detention order, learned counsel drew our attention to the grounds booklet served on the detainee and more particularly to pages 1683 to 1685 thereat. In pages 1683 to 1685 of the grounds booklet bail order in CrI.M.P.No.6800 of 2022 (Crime No.09/2022 on the file of Central Crime Branch) has been furnished to the detainee.

6. We had the benefit of perusing the grounds booklet and more particularly, the aforementioned bail order which shall hereinafter be referred to as *Naveen's* case as Naveen is the petitioner in CrI.M.P.No.6800 of 2022 on the file of the CCB & CBCID Metropolitan Magistrate Court, Egmore, Chennai. Taking us through *Naveen's* case bail order learned counsel submitted that it is a default bail under Section 167(2) of Cr.P.C. and therefore comparing the same with the ground case to arrive at subjective satisfaction qua imminent possibility of detainee being enlarged on bail is a flawed exercise.



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7. Responding to the aforementioned argument, Mr.Raj Thilak, learned Additional Public Prosecutor submitted to the contrary that alleged offences in the ground case and the alleged offences in *Naveen's* case bail order are broadly comparable.

8. We carefully considered the rival submissions. We find that in a default bail under Section 167(2) Cr.P.C. it is more of a arithmetic mechanism that works and there is no discretion for the bail Court concerned. Absent discretion for a bail Court, comparing a default case bail order with another case to arrive at subjective satisfaction that there is imminent possibility of detainee being enlarged on bail is clearly a flawed exercise. In this regard, we remind ourselves that imminent possibility is not qua time but qua probability. Therefore, the discretion of the bail Court assumes immense significance. In this view of the matter, we have no difficulty in accepting/sustaining the argument of the learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detainee being enlarged on bail is impaired. The



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consequence is impugned preventive detention order gets vitiated and deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 03.02.2023 bearing reference 29/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Tmt.Ramya, aged 35 years, wife of Thiru.Madhavan, now detained in Special Prison for Women, Puzhal, Chennai is directed to be set at liberty forthwith unless required in connection with any other case/cases. There shall be no order as to costs.

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

Index : Yes/No
Speaking order
Neutral Citation : Yes
rsi

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



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To

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Vepery, Chennai.
5. The Public Prosecutor
Madras High Court, Chennai



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

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