



H.C.P.No.326 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

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

H.C.P.No.326 of 2023

Muthumari

..

Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.

2.District Collector and District Magistrate
of Kancheepuram, Kanchipuram,
Kancheepuram District.

3.The Superintendent of Police,
Kanchipuram, Kanchipuram District.

4.The Superintendent,
Central Prison, Puzhal, Chennai.

5.State rep. By
The Inspector of Police,
Siva Kanchi Police Station,
Kanchipuram.

.. 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 in

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connection with the order of detention passed by the second respondent dated 31.12.2022 in R.C.No.12843/2022/M6-D.O.No.48/2022 against the petitioner's husband Kalidoss @ Kali, male, aged 28 years, son of Sambath, who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Saranraj

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 03.03.2023, this Court made the following order:



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M.SUNDAR, J.,
and
M.NIRMALKUMAR, J.

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

Captioned Habeas Corpus Petition has been filed in this Court on 24.02.2023 *inter alia* assailing a detention order dated 31.12.2022 bearing reference Re.No.12843/2022/M6-D.O.No.48/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Ms.S.Gayathri, learned counsel representing Mr.A.Saranraj, 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 394 and 397 of Indian Penal Code, 1860 (Act 45 of 1860) [IPC for brevity] in Crime No.748 of 2022 on the file of Siva Kanchi Police Station.



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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, Shum-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 in Page No.206 of the booklet furnished to the detenu pertaining to the ground case has not been properly translated.

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.

[M.S., J]

[M.N.K., J]

03.03.2023

gm



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2. The aforementioned order made in the 03.03.2023 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. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.748 of 2022 on the file of Siva Kanchi Police Station for alleged offences under Sections 394 and 397 of IPC. 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.

4. Mr.A.Saranraj, 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 translated copy of remand order has not been enclosed in the booklet furnished to the detenu was urged but in the final hearing today, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Elaborating on this point, learned counsel drew our attention to Paragraph 5 of the impugned preventive detention order and submitted that Detaining Authority has relied on an order dated 27.03.2020 made in *Suo Motu* C.M.P.No.719 of 2020 on the file of District Sessions Court II, Kancheepuram vide Crime No.25 of 2020 on the file of Siva Kanchi Police Station. To be noted, in this case, Jeeva @ Periya Kailan, son of Elumalai is the petitioner and therefore, this case shall be referred to as Jeeva's case. Learned counsel advertent to the bail order in Jeeva's case submitted that the bail order was made in view of directions of Hon'ble Supreme Court in *Suo Motu* W.P. (Civil) No.1 of 2020 owing to the 'Corona virus Pandemic and Consequent lock down' which shall be referred to as 'Covid-19 situation' which



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cannot be made applicable to the ground case or the adverse case qua bail as on the date of impugned preventive detention order Covid 19 situation had paled into past.

6. In response to the above argument, learned Prosecutor submitted to the contrary and said that the two orders are broadly comparable.

7. We had the benefit of perusing the bail order in Jeeva's case and we find that submission made by learned counsel for petitioner is acceptable. The reason is, a portion of the bail order of learned Sessions Judge in Jeeva's case reads as follows:

*'.....In furtherance to the directions of the Hon'ble Chief Justice at High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in Suo Motu W.P (Civil) No.1 of 2020 **In Re: Contagion of Covid 19 virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi** and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible.'*



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8. Be that as it may, there is one other facet of this point. As regards the subjective satisfaction arrived at by the Detaining Authority with regard to imminent / real possibility of detenu being enlarged on bail, a careful perusal of paragraph 5 of the impugned preventive detention order shows that the detaining authority has recorded the obtaining position that the bail application on behalf of the detenu will be filed. Though this obtaining position has been recorded, the detaining authority has said that the detenu is likely to get bail if 'he applies for bail'. Therefore, we have no difficulty in accepting the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority as regards imminent / real possibility of detenu being enlarged on bail is impaired. The direct impact or in other words, the consequence of this is, the impugned detention order gets vitiated and deserves to be dislodged.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.12.2022 bearing reference Rc.No.12843/2022/M6-D.O.No.48/2022 made by the second respondent is set aside and the detenu Thiru.Kalidoss @ Kali, aged 28



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years, son of Thiru.Sambath, 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.)
03.07.2023

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

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

To

- 1.The Additional Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-600 009.
2. The Commissioner of Police,
Greater Chennai, Vepery, Chennai – 7.
- 3.The Inspector of Police,
K2 Ayanavaram Police Station,
Chennai.
- 4.The Superintendent of Prison,
Central Prison II, Puzhal, Chennai – 66.
- 5.The Public Prosecutor,
High Court, Madras.



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

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