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H.C.P.No.383 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

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

H.C.P.No.383 of 2023

Vimala

.. Petitioner

Vs.

1. The Secretary to Government
Department of Home, Prohibition & Excise,
Government of Tamil Nadu, Fort St.George,
Chennai – 600 009.
2. The Commissioner of Police,
Greater Chennai, Egmore, Chennai – 8.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
C-3 Seven Wells Police Station,
Chennai.

... 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
and set aside the detention order made in Memo
No.485/BCDFGISSSV/2022 dated 23.12.2022 and to produce the
detenu viz., Prashanth @ Kulla Karuppa, aged about 23 years,

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S/o.Raja before this Court and set him at liberty, now detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.T.Kalaivanan
for Mr.X.Gerard

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 23.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 01.03.2023 inter alia assailing a detention order dated 23.12.2022 bearing reference No.485/BCDFGISSSV/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. The sister of the detenu is the petitioner.

3. Mr.X.Gerard, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listings on 15.03.2023 and 16.03.2023. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offence under Sections 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.298 of 2022 on the file of C-3 Seven Wells Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of



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'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 in the booklet served on the detenu, grounds of detention and some of the documents were not properly translated which prevented the detenu from making an effective representation.

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 23.03.2023 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.298 of 2022 on the file of C3 Seven Wells Police Station for an alleged offence under Section 302 IPC. Owing to the nature of the challenge to the impugned preventive detention



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order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.T.Kalaivanan, learned counsel representing the 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 some of the documents in the booklet furnished to the detenu were not properly translated was urged but in the final hearing today, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'4.....In a similar case registered u/s 147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station Cr.No.59/2021, the bail was granted by the learned



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Principal Sessions Court, Chennai in Crl.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application in C3 Seven Wells Police Station in Cr.Nos.297/2022 & 298/2022 before the appropriate court, since in similar case, the bail was granted by the court after a lapse of time.....'

6. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on Balaji's case bail order being bail order dated 26.05.2021 in Crime No.59 of 2021 on the file of R-3 Ashok Nagar Police Station. A careful perusal of Balaji's case bail order, more particularly paragraph 5 thereof brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail. Relevant portion is contained in paragraph 5 and the same reads as follows:

'5.....No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

7. Covid - 19 situation in legal parlance is from 15.03.2020 to



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28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, Balaji's case would not apply to the case on hand as the impugned preventive detention order has been made on 23.12.2022, which means that the impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 23.12.2022 bearing reference 485/BCDFGISSSV /2022 made by the second respondent is set aside and the detenu Thiru.Prasanth @ Kulla Karuppa, aged 23 years, son of Thiru.Raja, 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.)
04.07.2023

Index : Yes/No

Neutral Citation : Yes/No

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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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5. The Public Prosecutor,
High Court, Madras.



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

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