



H.C.P.No.374 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.374 of 2023

A. Sakthi Priya
W/o.Arunraj

.. Petitioner / Wife of Detenue

Vs.

1.The Chief Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Office of Commissioner of Police,
Vepery, Chennai – 600 007.

3.The Superintendent,
Central Prison, Puzhal
Chennai – 600 066.

4.The Inspector of Police (L & O),
P-6, Kodungaiyur Police Station,
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 entire records connected with the order of the 2nd respondent herein in BCDFGISSSV No.39/2023 dated 11.02.2023 against the petitioner's husband, Arunraj aged 27 years, confined at Central Prison, Puzhal, Chennai and set aside the same, consequently, directing the respondents herein to produce the body and person of the detainee before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.T.I.Ramanathan
for Mr.V.Parthiban

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 'Habeas Corpus Petition' ['HCP' for the sake of brevity].

2. When the captioned matter was listed in the admission board on 15.03.2023, the following order was made by this Court.

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'Captioned Habeas Corpus Petition has been filed in this Court on 01.03.2023 inter alia assailing a detention order dated 11.02.2023 bearing reference No.39/BCDFGI\SSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, wife of the detenu is the petitioner.

3. Mr.V.Parthiban, learned counsel on record for habeas corpus petitioner is before us. Learned counsel expresses regret for not representing the matter in the previous listing on 14.03.2023. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 336, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.37 of 2023 on the file of P-6, Kodungaiyur 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, 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].

5. The detention order has been assailed inter alia on the ground that there is a delay in passing the impugned detention order.

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



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accordingly.'

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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, short references and abbreviations used in the earlier order dated 15.03.2023 will continue to be used in the instant order also.

4. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.37 of 2023 on the file of P-6 Kodungaiyur Police Station for the alleged offences under Sections 341, 294(b), 336, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.

5. Mr.T.I.Ramanathan, 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.

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6. In the admission board, the point that there is a delay in making the impugned preventive detention order was canvassed but in the final hearing board, Mr.T.I.Ramanathan, learned counsel submitted that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'... In a similar case registered u/s 341, 294(b), 397 and 506(ii) of IPC at P-3 Vyasarpadi Police Station in Crime No.383/2018, the bail was granted by the Court of learned Principal Sessions, Chennai in Crl.M.P.No.8231/2018. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application in P-6 Kodungaiyur Police Station Crime No.37/2023 before the appropriate court, since in a similar case, the bail was granted by court after a lapse of time. ...'

7. Learned counsel advertng to the grounds booklet and more particularly to pages 161 and 162 thereat submitted that while the grounds of impugned preventive detention order talks about bail order in Crl.M.P.No.8231 of 2018, the bail order in Crl.M.P.No.2578 of 2023



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(**R.Manikandan** case) has been supplied. This has baffled detenu and impaired his right to make an effective representation is his further submission.

8. In response to the above argument, learned Additional Public prosecutor submitted that offences in CrI.M.P.Nos.8231/2018 and 2578/2023 are largely similar.

9. We carefully considered the rival submissions. We are of the view that when the grounds of impugned preventive detention order specifically refers to a bail order giving the case number for the purpose of arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail, it is imperative that the copy of the same is supplied to the detenu as part of the grounds booklet. That has not been done in the case on hand. This by itself is an infraction of petitioner's right to make an effective representation against the impugned preventive detention order which is a constitutional safeguard ingrained in Clause (5) of Article 22 of the Constitution of India. In addition to this point this also means that there is a



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clear procedural flaw in the clamping of the impugned preventive detention order. To be noted procedural fairness is now read into preventive detention orders. Therefore, the sequitur is impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.02.2023 bearing reference 39/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Arunraj, aged 27 years, son of Thiru.Elumalai 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.)
24.07.2023

Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes /No
rsi

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

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

rsi

To

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Home, Prohibition and Excise Department,
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- 2.The Commissioner of Police,
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Vepery, Chennai – 600 007.
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- 4.The Inspector of Police (L & O),
P-6, Kodungaiyur Police Station,
Chennai.
- 5.The Public Prosecutor
Madras High Court, Chennai

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