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H.C.P.No.349 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.349 of 2023

Keerthika

.. Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 9.
- 2.The District Collector and District Magistrate,
Villupuram District, Villupuram.
- 3.The Superintendent of Prison,
Central Prison, Cuddalore,
Cuddalore.
- 4.The Superintendent of Police,
Villupuram, Villupuram District.
- 5.State rep. By its
The Inspector of Police,
Vikravandi Circle Police Station,
Villupuram District.

..Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 07.02.2023 on the file of the second respondent herein made in proceedings Memo Rc.No.C2/9811/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Jagadeswaran @ Jagan, S/o.Mohan, aged 32 years before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Cuddalore.

For Petitioner : Mr.Magendiraverman
for Mr.R.Sasikumar

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

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 07.02.2023 bearing reference Rc.No.C2/9811/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by 'second respondent' (hereinafter 'detaining authority' for the sake of convenience). To be noted, fifth respondent is the sponsoring



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authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.13 of 2023 on the file of Periyathachur Police Station for alleged offences under Sections 4(1)(aaa), 4(1-A) and 14A of 'Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' 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



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matrix or be detained further by facts.

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4. Mr.Magendiraverman, 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. In the support affidavit qua captioned HCP though very many points have been raised, in the final hearing today, Mr.Magendiraverman, learned counsel representing the counsel on record for petitioner 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 impaired.

6. Elaborating on the aforementioned submission, learned counsel drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order and the same reads as follows:

'5....I am also aware that a bail application filed by him for the above case in C.M.P.No.610/2023 in the Principal District and Sessions Court, Villupuram was



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dismissed on 30.01.2023. Further he has filed another bail application in Crl.O.P.No.2672/2023 in the High Court of Madras is pending. Hence, there is very likely of his coming out on bail in the above case. Since, in similar cases bails are granted by the Courts. For example in a similar case bail was granted to Thiru.Sivakumar, son of Annadurai in Crl.M.P.No.4548/2017 dated 27.10.2017 by the Court of Cuddalore Division Sessions Judge, Cuddalore for Crime No.581/2017 u/s.4(1)(aaa), 4(1-A) and 14A of Tamil Nadu Prohibition Act, 1937 of Virudhachalam Prohibition Enforcement Wing.....'

7. Learned counsel for HCP petitioner thereafter drew our attention to pages 96 and 97 of the grounds booklet. To be noted pages 96 and 97 of the grounds booklet contain Sivakumar's bail order dated 27.10.2017 which has been adverted to by the detaining authority in a portion of paragraph 5 which has been extracted and reproduced supra. The neat submission made by learned counsel for HCP petitioner is, detaining authority has arrived at aforementioned subjective satisfaction that there is imminent possibility of detenu being enlarged on bail by Hon'ble High Court by relying on Sivakumar's case which is a bail order granted by the then learned Sessions Judge. Learned counsel submits that in the hierarchy of



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Courts such comparison is clearly flawed.

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8. In response to the above submission, learned Prosecutor submits that the offences in *Sivakumar's case bail order* and the ground case are broadly comparable.

9. We carefully considered the rival submissions and we are of the view that it is not merely comparison of offences but the determinants and parameters for grant of bail which is a discretionary relief have to be taken into account. In this view of the matter, comparing or relying on a bail order granted by a learned Sessions Judge to conclude or arrive at subjective satisfaction that there is imminent possibility of Hon'ble High Court granting bail is clearly a flawed exercise owing to hierarchy of Courts. Therefore, we sustain the argument made by learned counsel for HCP petitioner and the result is, impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 07.02.2023 bearing reference Rc.No.C2/9811/2023 made by the second respondent is set aside and



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the detenu Thiru.Jagadeswaran @ Jagan, aged 32 years, son of Thiru.Mohan, 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
Neutral Citation : Yes/No
mmi

P.S. Registry to forthwith communicate this order to Jail authorities in Central Prison, Cuddalore.
To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 9.
- 2.The District Collector and District Magistrate,
Villupuram District, Villupuram.
- 3.The Superintendent of Prison,
Central Prison, Cuddalore,
Cuddalore.
- 4.The Superintendent of Police,
Villupuram, Villupuram District.
- 5.The Inspector of Police,
Vikravandi Circle Police Station,
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- 6.The Public Prosecutor

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

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