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H.C.P.No.364 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

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

H.C.P.No.364 of 2023

Sandhiya

.. Petitioner

VS

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,
City Police Office, Huzur Road,
Coimbatore City, Coimbatore – 18.
- 3.The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
- 4.State rep. By its
The Inspector of Police,
B-1 Bazaar Police Station,
Coimbatore District.

.. Respondents

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 brother's detention under Tamil Nadu Act 14 of 1982 vide detention order dated 14.11.2022 on the file of the second respondent made in C.No.70/G/IS/2022, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother namely V.Subash @ Mapla



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Subash, S/o.Venkatesh, aged 22 years before this Court and set the petitioner's brother at liberty from detention, now the petitioner's brother detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
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 13.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 07.03.2023 inter alia assailing a detention order dated 14.11.2022 bearing reference C.No.70/G/IS/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. Sister of the detenu is the petitioner.

3. Mr.W.Camyles Gandhi, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 294(b), 394 read with Sections 397



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and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.326 of 2022 on the file of B1, Bazaar Police Station, Coimbatore District.

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 copy of the remand order served on the detenu was 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.S.Raja Kumar, 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 13.03.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and



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abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.326 of 2022 on the file of B-1 Bazaar Police Station for the alleged offences under Sections 294(b), 394 r/w 397 and 506 (ii) 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.W.Camyles Gandhi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the Admission Board, learned counsel for petitioner projected his argument on the ground that the remand order was not properly translated but in the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission,



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learned counsel drew our attention to a portion of paragraph 8 of the grounds of detention and the relevant portion reads as follows:

'Further in Coimbatore District, Thudiyalur Police Station Crime No.397/2022 u/s 392, 394, 397 and 506(ii) IPC (which is registered under similar section of law), bail was granted to the accused J.Nisarudeen @ Arath Nisar by the Court of Hon'ble Judicial Magistrate No.I, Coimbatore in C.M.P. No.17887/2022 on 27.06.2022. Copies of the above orders have been enclosed in the booklet containing the related documents/records.....'

6. Learned counsel submitted that aforementioned bail order in 'Nisar @ Arath Nisar's case' (hereinafter *Nisar's case* bail order for the sake of convenience) and bail petition thereat have been furnished to the detenu as part of the grounds booklet. Adverting to the bail petition as well as the bail order in the grounds booklet, learned counsel submitted that the aforementioned bail order dated 27.06.2022 made by the learned Judicial Magistrate – I, Coimbatore is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the subjective satisfaction is impaired.



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7. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases are broadly comparable.

8. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 14.11.2022 bearing reference C.No.70/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.V.Subash @ Mapla Suresh, aged 22 years, son of Thiru.Venkatesh, is directed to be set at liberty forthwith, if not



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required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
26.06.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,
City Police Office, Huzur Road,
Coimbatore City, Coimbatore – 18.
- 3.The Superintendent of Prison,
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- 4.The Inspector of Police,
B-1 Bazaar Police Station,
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- 5.The Public Prosecutor,
High Court, Madras.



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

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