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H.C.P.No.372 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.372 of 2023

Subhasree

W/o.Ajith @ Sasikumar

.. Petitioner / Wife of Detenue

Vs.

1.State of Tamil Nadu

Rep. by the Additional Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,

Greater Chennai,
Vepery, Chennai – 600 007.

3.The Inspector of Police,

P-1, Pulianthope Police Station,
Chennai.

4.The Superintendent of Prison,

Central Prison-II,
Puzhal, Chennai – 600 066.

... 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 records relating to the detention order in Memo No.41/BCDFGISSSV/2023 dated 11.02.2023, passed by the second respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband Thiru.Ajith @Sasikumar S/o.Venkatesan, aged about 26 years the detainee, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Thiru.Ajith @Sasikumar S/o.Venkatesan, aged about 26 years the detainee herein at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy
for Mr.R.Muthukumar

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 matter.

2. When the captioned matter was listed in the admission board on 14.03.2023, the following order was made by this Court.

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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,**

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

Captioned Habeas Corpus Petition has been filed in this Court on 07.03.2023 inter alia assailing a detention order dated 11.02.2023 bearing Ref. No.41/SCDHGT555V/2023 made by 'second respondent (hereinafter 'Detaining Authority' for the sake of convenience and clarity). To be noted, third respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. M.R.Muthukumar, 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 147, 148, 341, 294(b), 324, 302 and 506(ii) IPC in Crim No.08 of 2023 on the file of P-1 Pulianthope 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-

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offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-
offenders, Sexual-offenders, Slum-grabbers and Viden Prades 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 grounds
that the copy of the bail petition relied upon by the detaining authority has
not been furnished to the detainee and the similar case relied upon by the
detaining authority is not really similar.

6. *Prima facie* case made out for admission. Admitt. 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.,]

14.03.2023

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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 14.03.2023 will continue to be used in the instant order also.

4. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.08 of 2023 on the file of P-1 Pulianthope Police Station for the alleged offences under Sections 147, 148, 341, 294(b), 324, 302 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.Ilayaraja Kandasamy, 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. Learned counsel for the petitioner both in the Admission Board as well as in the final hearing 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 flawed / impaired. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows:

'... In a similar case registered u/s 147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station in Cr.No.59/2021, the bail was granted by the Principal Sessions Court, Chennai in CrI.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 P-1 Pulianthope Police Station in Crime No.08/2023 before the appropriate Court, since in a similar case, the bail was granted by court after a lapse of time. ...'

7. Adverting to the aforesaid portion of the grounds of impugned preventive detention order, learned counsel drew our attention to the grounds booklet served on the detenu and more particularly to pages 275



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to 277 thereat. In pages 275 to 277 of the grounds booklet bail order in CrI.M.P.No.10485 of 2021 (Crime No.59/2021 on the file of R3 Ashok Nagar Police Station) has been furnished to the detinue. To be noted, this 26.05.2021 bail order is in the case of one Balaji and therefore this order shall be referred to as **Balaji's** case. We had the benefit of perusing this **Balaji's** case bail order. We find that **Balaji's** case bail order turns largely on then obtaining Covid-19 situation. This is articulated in Paragraph 5 of the bail order of the learned Sessions Judge and the relevant portion of Paragraph 5 reads as follows:

'5.....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.'

8. We also noticed that **Balaji's** case bail order is dated 26.05.2021 and it was at a time when the hearings were only on a videoconferencing platform (virtual hearings). It is further to be noted that **Balaji's** case was vide a virtual hearing.



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WEB COPY 9. In response to the above point, learned Additional Public Prosecutor submitted to the contrary and said that the two cases are largely comparable. After perusing **Balaji's** case bail order we are unable to accept this submission as determinants and parameters applied therein are completely different *inter alia* owing to reason delineated supra. We also find that in **Balaji's** case, alleged offences are under Sections 147, 148, 449, 324 and 302 IPC, which are quite different from the ground case qua impugned detention order on hand as the same turns on Sections 147, 148, 341, 294(b), 324, 302 and 506(ii) of IPC. Therefore, we have no difficulty in coming to the conclusion that the subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail is impaired. This means that the impugned detention order deserves to be dislodged.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.02.2023 bearing reference 41/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Ajith @



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Sasikumar, aged 26 years, son of Thiru.Venkatesan 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.

To

- 1.The Additional Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai – 600 007.
- 3.The Inspector of Police,
P-1, Pulianthope Police Station,
Chennai.
- 4.The Superintendent of Prison,
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and
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5.The Public Prosecutor
Madras High Court, Chennai

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