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H.C.P.No.460 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.460 of 2023

Mrs.Harika

.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep.by its Secretary
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Police
Avadi City, office of the Commissioner of Police
Avadi, Chennai – 600 054
3. The Inspector of Police
Prohibition Enforcement Wing
Ambattur Unit, Avadi City
Chennai – 600 053
Cr.No.15 of 2023
4. The Superintendent of Prison
Central Prison, Puzhal, Chennai – 600 066 .. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus calling for the records pertaining



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to the detention order in No.17/BCDFGISSSV/2023 dated 27.01.2023 passed by the 2nd respondent detaining the petitioner's husband Thiru.Sathasivam @ Senthil, aged 38 years, son of Jayakumar as a 'Drug Offender' under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce petitioner's husband, the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Senthamizhan
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

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

When the captioned was listed before this Court in the Admission Board on 28.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 13.03.2023 inter alia assailing a detention order dated 27.01.2023 bearing reference No.17/BCDFGISSSV/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.



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3. *Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 8(c) read with 20(b)(ii)(C) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.15 of 2023 on the file of Prohibition Enforcement Wing, Ambattur Unit.*

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 some of the pages in the booklet furnished to the detenu are not legible 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.'*



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2. The aforementioned order made in the 28.03.2023 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 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. 15 of 2023 on the file of Prohibition Enforcement Wing, Ambattur Unit for alleged offences under Section 8(c) read with Section 20(b)(ii)(C) of NDPS Act. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Senthamizhan, 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 pages in the booklet furnished to the detenu are not legible which prevented the detenu from making an effective representation was raised but in the final hearing today, Mr.S.Senthamizhan, learned counsel on record for the petitioner



projected his argument qua his campaign against the impugned preventive detention order on the point that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. In support of this submission and in elaboration of this submission, learned counsel drew our attention to two portions i.e., a portion of the order in para 3 and 4 of the grounds of impugned preventive detention order and the same read as follows:

'(3).....Later, the Inspector of Police along with the seized properties and accused Thiru.Sathasivam @ Senthil, Thiru.Dheen Sudhan @ Dheena and Tmt.Kausalya returned to Prohibition Enforcement Wing, Ambattur Unit on 06.01.2023 at 1415 hours and the Inspector of Police registered a case in Prohibition Enforcement Wing, Ambattur Unit Cr.NO.15/2023 u/s.8(c) r/w.20(b)(ii)(C) of NDPS Act, 1985 and taken up for investigation.'

'(4).... In a similar case registered in D1 Triplicane Police Station Cr.No.932/2020 u/s.8(c) r/w.20(b)(ii)(B) of NDPS Act, 1985 bail was granted by the Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.1842/2020. Hence, I infer that there is a real possibility of his coming out on bail in Prohibition Enforcement Wing, Ambattur Unit Crime No.15/2023 case by filing bail application before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time.....'

6. Learned counsel submitted that the aforementioned portions show that the aforementioned subjective satisfaction of the detaining



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authority has been arrived at by comparing the bail order in Rakesh's case is intermediate quantity under Section 20(b)(ii)(B) of NDPS Act whereas the ground case is one for alleged commercial quantity under Section 20(b)(ii)(C) of NDPS Act.

7. In response to the aforementioned argument, learned Prosecutor submitted that the ground case as well as Rakesh's case bail order are qua substance under NDPS Act and are therefore comparable.

8. We carefully considered the rival submissions and we find that the aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is impaired because the parameters and determinants for grant of discretionary relief of bail should also be taken into account while comparing a case with another case to arrive at subjective satisfaction regarding imminent possibility of detenu being enlarged on bail. In the light of Section 37 of NDPS Act, which is in the nature of a statutory bar qua bail in commercial quantity cases, we have no difficulty in saying that the statute itself recognises a distinction between 'in between quantity/intermediate quantity' under Section 20(b)(ii)(B) of NDPS Act and 'commercial quantity' under Section



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20(b)(ii)(C) of NDPS Act when it comes to grant of bail and therefore comparison of one with the other to arrive at aforementioned subjective satisfaction is clearly a flawed exercise which reminds us of the age old adages 'comparing apples and oranges' and 'comparing cheese and chalk'.

9. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.01.2023 bearing reference No.17/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Sathasivam @ Senthil, aged 38 years, son of Thiru.Jayakumar, 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
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal.



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To

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High Court, Madras.



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

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