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H.C.P.No.420 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.420 of 2023

M.Chandrababu
S/o.Mohanraj

.. Petitioner / Detenue

Vs.

- 1.State of Tamil Nadu
Rep. by the Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police/Detaining Authority,
City Police Office,
Huzur Road,
Coimbatore City,
Coimbatore – 18.
- 3.The Superintendent of Prison,
Central Prison,
Coimbatore.
- 4.The Inspector of Police,
C-4, Rathinapuri Police Station,
Coimbatore 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 calling for the records relating to the Detention Order vide Memo C.No.13/G/IS/2023 dated 20.02.2023, passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner namely M.Chandrababu, S/o.Mohanraj, aged 33 years, (who is presently undergoing detention in the Central Prison, Coimbatore), before this Court and set him at liberty.

For Petitioner : Mr.P.Narayana Prasadh

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 21.03.2023, the following order was made by this Court.



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M.SUNDAR, J.,
and
N.ANAND VENKATESH, J.,

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

Deponed Habeas Corpus Petition has been filed in this Court on 14.03.2023 in which assailing a detention order dated 27.02.2023 bearing Ref. C.No.13/G/18/2023 made by 'Second Respondent' (hereinafter 'Detaining Authority' for the sake of convenience and clarity). To be noted, fourth respondent is the 5th Respondent Authority.

2. Detenu is the petitioner.

3. Mr.S.N.Arunkumar, 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 Section 8(c) read with 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crim.No.25 of 2023 on the file of C-4 Rathinapuri Police Station.

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,

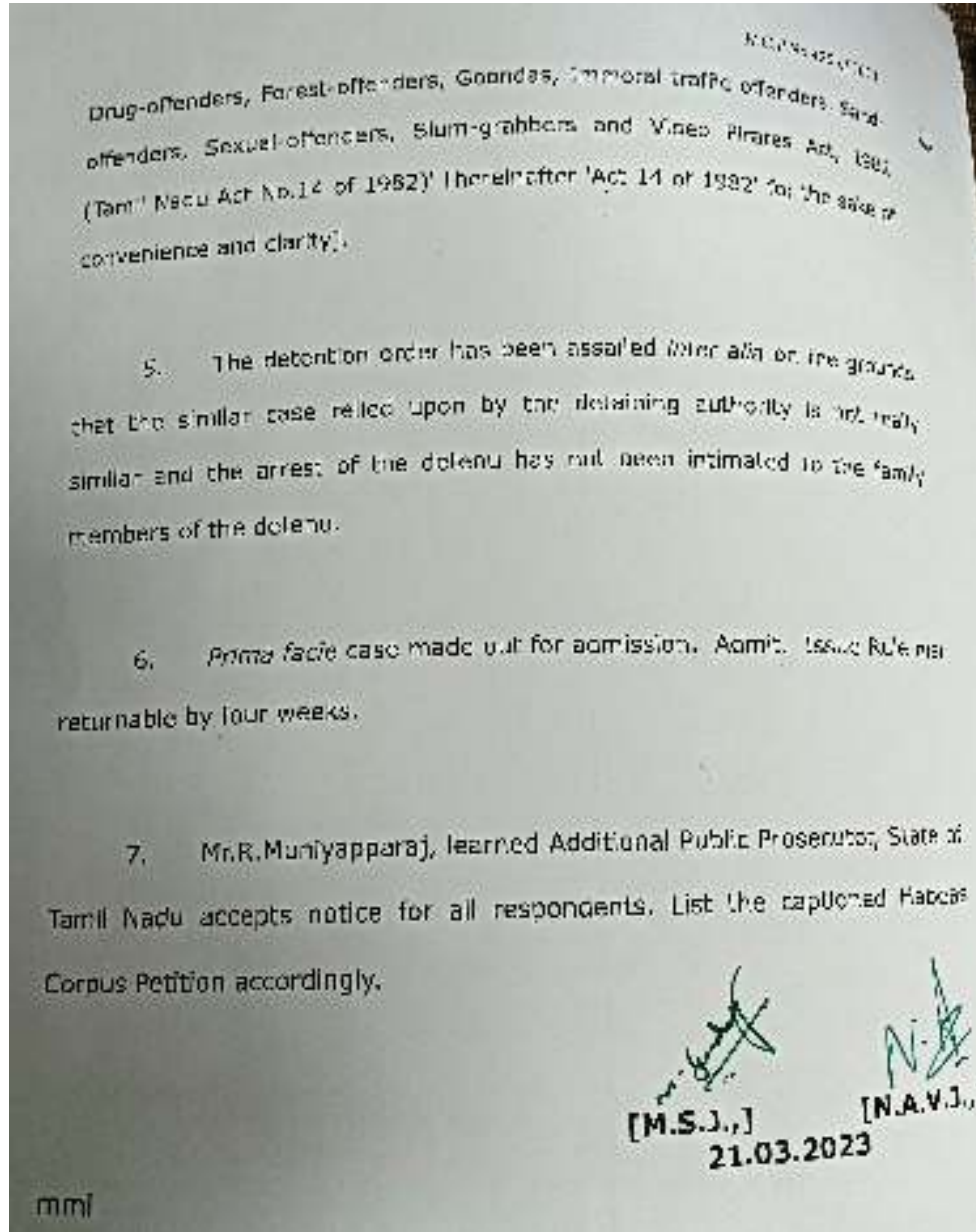
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3. The aforementioned order / proceedings shall now be read as an integral part and parcel of this order. This means that the short forms and short references for convenience used in the earlier order dated 21.03.2023 will continue to be used in the instant order also.

4. The learned counsel 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 flawed / impaired. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph 6 of the grounds of impugned preventive detention order and that portion reads as follows:

'... Further, in Coimbatore City, B-1 Bazaar Police Station Crime No.12/2018 u/s 8(c) r/w 20(b)(ii)(B) Narcotic Drugs and Psychotropic Substances Act 1985 (which is registered under similar sections of law), bail was granted to accused A.Karthikeyan @ Karthi by the Court of Hon'ble Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore in C.M.P. No.151/2018 dated 08.03.2018. Copies of the above orders have been



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enclosed in the booklet containing the related documents/records. Hence, I infer that there is a real possibility of the accused M.Chandrababu for filing bail application before the appropriate Court and being released on bail in Coimbatore City, C-4 Rathinapuri Police Station Crime No.25/2023, since in similar cases the concerned Court or higher Court grants bail after lapse of certain time. ...”

5. 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 detainee and more particularly to pages 113 and 114 thereat. In pages 113 and 114 of the grounds booklet bail order in C.M.P.No.151 of 2018 (Crime No.12/2018 on the file of B1 Bazaar Police Station) has been furnished to the detainee.

6. We had the benefit of perusing the grounds booklet and more particularly, the aforementioned bail order which shall hereinafter be referred to as **Karthikeyan's** case as Karthikeyan is the petitioner in C.M.P.No.151 of 2018 on the file of the Additional District Court/Special Court for EC Act cases, Coimbatore. Taking us through **Karthikeyan's** case



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bail order, learned counsel submitted that it is a default bail under Section 167(2) of Cr.P.C. and therefore comparing the same with the ground case to arrive at subjective satisfaction qua imminent possibility of detenue being enlarged on bail is a flawed exercise.

7. Responding to the aforementioned argument, Mr.Raj Thilak, learned Additional Public Prosecutor submitted to the contrary that the alleged offences in the ground case and the alleged offences in ***Karthikeyan's*** case bail order are broadly comparable.

8. We carefully considered the rival submissions. We find that in default bail case under Section 167(2) Cr.P.C. it is more of arithmetic mechanism that is working and there is no discretion for the bail Court concerned. Absent discretion for a bail Court, comparing a default case bail order with another case to arrive at subjective satisfaction that there is imminent possibility of detenue being enlarged on bail is clearly a flawed exercise. In this regard we remind ourselves that imminent possibility is not qua time but qua probability. Therefore the discretion of the bail Court



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assumes immense significance. In this view of the matter, we have no difficulty in accepting, sustaining the argument of the learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. The consequence is impugned preventive detention order gets vitiated and deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 20.02.2023 bearing reference C.No.13/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.M.Chandrababu, aged 33 years, son of Thiru.Mohanraj, now detained in Central Prison, Coimbatore is directed to be set at liberty forthwith unless 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

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

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To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police/Detaining Authority,
City Police Office,
Huzur Road,
Coimbatore City,
Coimbatore – 18.
- 3.The Superintendent of Prison,
Central Prison,
Coimbatore.
- 4.The Inspector of Police,
C-4, Rathinapuri Police Station,
Coimbatore District.
- 5.The Public Prosecutor
Madras High Court, Chennai



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R.SAKTHIVEL, J.

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