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H.C.P.No.459 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

Coram

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

H.C.P.No.459 of 2023

Vijaya

.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep. By its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Thiruvarur District, Thiruvarur.
- 3.The Superintendent of Police,
Thiruvarur District, Thiruvarur.
- 4.The Superintendent of Prison,
Central Prison, Tiruchirappalli.
- 5.The Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruthuraipoondi 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 records pertaining to the detention order dated 21.12.2022 in C.O.C.No.43/2022 passed by the 2nd respondent and issue direction to produce the body of petitioner's husband/detenu namely



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Madhavan, S/o.Nagarajan, aged 42 years, presently confined at Central Prison, Thiruchirappalli, before this Court and set him at liberty forthwith and quash the same.

For Petitioner : Mr.Swamisubramanian
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 28.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 14.03.2023 inter alia assailing a detention order dated 21.12.2022 bearing reference C.O.C.No.43/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, 1937 read with Section 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.599 of 2022 on the file of Tiruthuraipoondi Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Boot-Legger' under Section 2(b) 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



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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.'

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 are four adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.599 of 2022 on the file of Tiruthuraipoondi Police Station for the alleged offences under Sections 4(1)(aaa) and 4(1-A) of TNP Act read with Section 328 of 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.



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4. Mr.Swami Subramanian, 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, campaign against impugned preventive detention order was predicated on the point that some of the pages in the booklet furnished to the detenu are not legible. To be noted, this is captured in paragraph 5 of the Admission Board order dated 28.03.2023. Be that as it may, in the Final Hearing Board today, learned counsel for petitioner projected his argument 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, learned counsel drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

'5.....In similar case (i.e) Crime Number 183/2016 u/s 4(1)(aaa) r/w 4(1-A) TNP Act & Transport Act of Mayiladuthurai Prohibition Enforcement Wing, bail was granted by the court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P.No.943/2016 dated 11.04.2016 to an accused by name Tmt.Jayabharathi, W/o.Selvam. Hence, I am satisfied



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that there is a real possibility of he (Thiru.Madhavan, male, aged 42/2022, S/o.Nagarajan) coming out on bail by filing a bail application for the above case before the Higher Court.....'

6. We had the benefit of perusing the aforementioned bail order [we shall refer to the same as '*Jayabharathi's case*' as Jayabharathi is the petitioner therein]. In *Jayabharathi's case* bail order, it is stated as follows:

'...It is further represented on the side of the petitioner/accused that the petitioner/accused that no previous case is pending as against this accused and hence he prays that the petitioner/accused may be released on bail on any condition.

It is contended and submitted on the side of the learned public prosecutor that there is no previous cases are pending as against the accused and the investigation is almost over and he has no serious objection to release the petitioner/accused on bail.....'

7. Adverting to the aforementioned portion of *Jayabharathi's* case bail order, learned counsel for petitioner submits that even according to the impugned preventive detention order, there are as many as four adverse cases in the case on hand and therefore, the comparison is bad. Therefore, we have no hesitation in accepting



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the submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority is impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.12.2022 bearing reference C.O.C.No.43/2022 made by the second respondent is set aside and the detenu Thiru.Madhavan, aged 42 years, son of Thiru.Nagarajan, 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.)
04.07.2023

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, Tiruchirappalli.

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Thiruvarur District, Thiruvarur.



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3.The Superintendent of Police,
Thiruvarur District, Thiruvarur.

4.The Superintendent of Prison,
Central Prison, Tiruchirappalli.

5.The Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruthuraipoondi District.

6.The Public Prosecutor,
High Court, Madras.



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R.SAKTHIVEL, J.,**

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