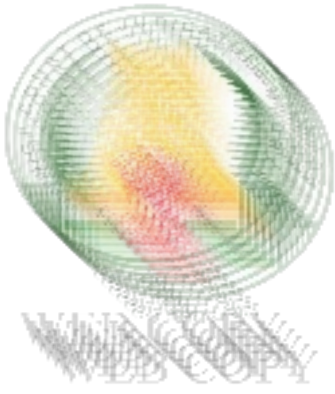




H.C.P.No.418 of 2023

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.418 of 2023

Kishore

S/o.Nageshvararao

.. Petitioner /Friend of detenu

vs

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009.

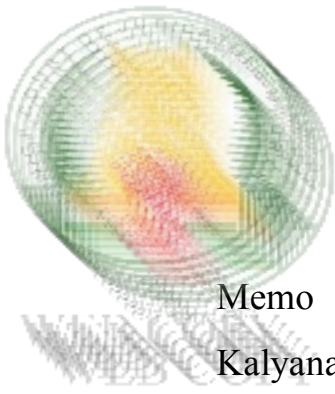
2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 600 066.

4. The Inspector of Police
Anna Nagar PEW Police Station,
Chennai.

.. 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 in connection with the order of detention passed by the 2nd respondent dated 07.02.2023 in



H.C.P.No.418 of 2023

Memo No.37/BCDFGISSSV/2023 against the petitioner's friend Kalyanasundaram, Male aged 26 years, Son of Iyyappan, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Ms.M.Kokila

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

ORDER

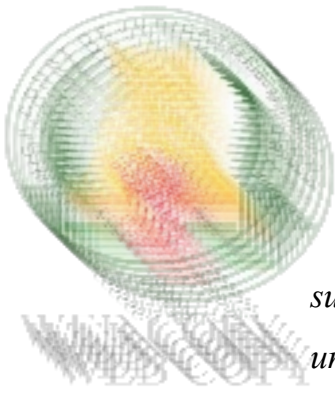
[Order of the Court was made by **M.SUNDAR, J.**]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 21.03.2023, 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 07.02.2023 bearing Ref. No.37/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. *Friend of the detenu is the petitioner.*

3. *Mr.S.Senthilvel, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner*



H.C.P.No.418 of 2023

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 Crime No.43 of 2023 on the file of Anna Nagar Prohibition Enforcement Wing.

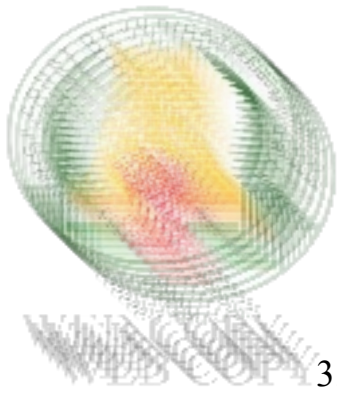
4. *The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, 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 the similar case relied upon by the detaining authority is not really similar.*

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 21.03.2023 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.

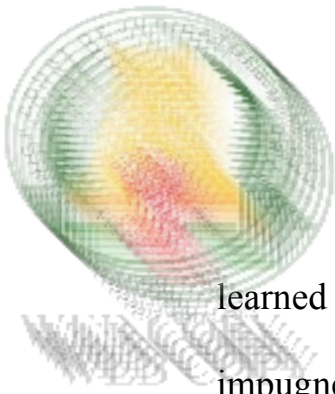


H.C.P.No.418 of 2023

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.43 of 2023 on the file of Anna Nagar Prohibition Enforcement Wing for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of 'The Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. 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. Ms.M.Kokila, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner both in the Admission Board as well as in the final hearing predicated her 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 his submission in this direction,



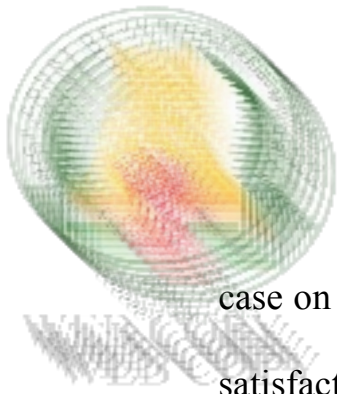
H.C.P.No.418 of 2023

learned counsel drew our attention to a portion of paragraph 4 of grounds of impugned preventive detention order and that portion reads as follows:

'4. ... In a similar case registered at E-4 Abiramapuram Police Station in Cr.No.134/2021 u/s 8(c) r/w 20(b)(ii)(B), 29(1) of NDPS Act 1985, the bail was granted by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, in CrI.M.P.No.1414/2021. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application for Anna Nagar, Prohibition Enforcement Wing in Crime No.43/2023 before the appropriate Court, since, in similarly placed cases, the bail was granted by the courts, after a lapse of time. ...'

6. Learned counsel submitted that the aforementioned order in CrI.M.P.No.1414 of 2021 has been furnished to the detenu as part of the grounds booklet and the order is at pages 345 to 349. This order will now be referred to as **Vasu's** bail order as one Vasu @ Vasudevan is the petitioner.

7. Learned counsel submitted that **Vasu's** bail order is one where the learned Principal Special Judge gravitated towards granting discretionary relief of bail as there was no previous cases qua Vasu whereas in the case on hand even according to the impugned preventive detention order, allegedly there are as many as two adverse cases. This means that comparison of the



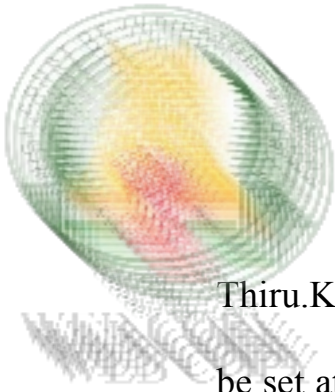
H.C.P.No.418 of 2023

case on hand with Vasu's bail order for arriving at aforementioned subjective satisfaction is impaired is learned counsel's say.

8. In response to the aforementioned argument, learned Additional Public Prosecutor submitted that alleged offences in **Vasu's** case and the case on hand are broadly comparable.

9. This Court has repeatedly held that it is not just comparison of offences but it is also comparison of determinants/parameters for grant of bail. In the case on hand, we find that determinants/parameters are different as there was no previous cases qua **Vasu's** bail order whereas in the case on hand as many as two adverse cases qua detenu even according to the impugned preventive detention order. This means that the comparison is flawed. If the comparison is flawed it leads to the conclusion that the impugned preventive detention deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 07.02.2023 bearing reference 37/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu



H.C.P.No.418 of 2023

Thiru.Kalyanasundaram, aged 26 years, son of Thiru.Iyyappan 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.

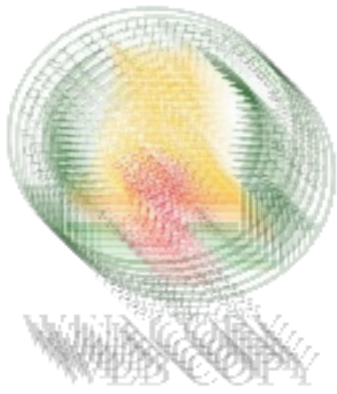
(M.S.,J.) (R.S.V.,J.)
24.07.2023

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 Chief Secretary to Government,
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 600 066.
4. The Inspector of Police
Anna Nagar PEW Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



H.C.P.No.418 of 2023

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

rsi

H.C.P.No.418 of 2023

24.07.2023