



H.C.P.No.429 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

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

H.C.P.No.429 of 2023

Thangapriya

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai -9.
- 2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.
- 3.The Superintendent of Police,
Coimbatore, Coimbatore District.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
- 5.State Rep. By its
The Inspector of Police,
Karamadai Police Station,
Coimbatore 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 entire
records, relating to the petitioner's husband detention under Tamil



H.C.P.No.429 of 2023

Nadu Act 14 of 1982 vide detention order, dated 24.01.2023 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.07/G/2023/E1, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Suresh @ Soot Suresh, S/o. Sivaperumal, aged 32 years, before this Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi
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 23.03.2023, this Court made the following order:

"Captioned Habeas Corpus Petition has been filed in this Court on 15.03.2023 inter alia assailing a detention order dated 24.01.2023 bearing reference Cr.M.P.No.07/G/2023/E1 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, wife of the detenu is the petitioner.

3. Mr.W.Camyles Gandhi, 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 454 and 380 of 'Indian Penal



WEB COPY



H.C.P.No.429 of 2023

Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.557 of 2022 on the file of Karamadai 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-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 'live and proximate link' between the grounds of detention and purpose of detention has snapped as there is a delay in passing the detention order.

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 23.03.2023 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 three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.557 of 2022 on the file of Karamadai



H.C.P.No.429 of 2023

Police Station for the alleged offences under Sections 454 and 380 IPC.

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.W.Camyles Gandhi, 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 (as would be evident from paragraph 5 of the admission board order dated 23.03.2023) the point that live and proximate link between the grounds of detention and purpose of detention has snapped was projected but in the Final Hearing Board today, learned counsel predicated his 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 on this submission, learned counsel drew our attention to a portion of paragraph 5 of the grounds of detention and the relevant portion reads as follows:



WEB COPY



H.C.P.No.429 of 2023

'5..... In the very same case of the previous case involved by Thiru.Suresh @ Soot Suresh by the Court of Judicial Magistrate No.II, Pollachi vide C.M.P. No.115/2023 dated 12.01.2023. Hence there is a real possibility of Thiru.Suresh @ Soot Suresh to be released on bail in the cases of Coimbatore District, Karamadai Police Station in Crime Nos.410/2022 under Section 379 IPC, 512/2022 under Section 457, 380 IPC and 557/2022 under Section 454, 380 IPC....'

6. Learned counsel submitted that aforementioned bail order in detenu's own case (hereinafter '*Suresh's case* bail order' for the sake of convenience) has been furnished to the detenu as part of the grounds booklet. Adverting to the bail petition as well as the bail order in the grounds booklet, learned counsel submitted that the aforementioned bail order dated 12.01.2023 made by the learned Judicial Magistrate II, Pollachi is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter '*CrPC*' for the sake of brevity and clarity] and therefore the subjective satisfaction is impaired.



H.C.P.No.429 of 2023

7. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases are broadly comparable.

8. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.01.2023 bearing reference Cr.M.P.No.07/G/2023/E1 made by the second respondent is set aside and the detenu Thiru.Suresh @ Soot Suresh, aged 32 years, Son of



H.C.P.No.429 of 2023

Thiru.Sivaperumal, 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.)
19.07.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai -9.
- 2.The District Collector and District Magistrate,
Coimbatore, Coimbatore District.
- 3.The Superintendent of Police,
Coimbatore, Coimbatore District.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore,
Coimbatore District.
- 5.The Inspector of Police,
Karamadai Police Station,
Coimbatore District.
- 6.The Public Prosecutor,
High Court, Madras.

Page Nos.7/8



WEB COPY



H.C.P.No.429 of 2023

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

mmi

H.C.P.No.429 of 2023

19.07.2023

Page Nos.8/8