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H.C.P.No.941 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

Coram

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

H.C.P.No.941 of 2023

Sridevi

.. Petitioner/
Mother of detenu

VS

1.State of Tamil Nadu Rep. by its Secretary Home
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The District Collector and District Magistrate
Ranipettai District

3.The Superintendent of Prison
Central Prison, Salem
Salem District

4.The Superintendent of Police
Salem, Salem District

5.The Inspector of Police,
Arakkonam Town Police Station
Arakkonam
Ranipettai 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 relating to



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the detention order vide B3/D.O.No.71/2022 dated 13/12/2022 passed by the 2nd respondent and quash the same and direct the respondents herein to produce the petitioner's son namely Sasikumar @ Gowtham, aged 26 years, son of Srinivasan (who is presently undergoing detention in the Central Prison, Salem) before this Court and set him at liberty.

For Petitioner : Mr.K.Venkatesan
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 05.06.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 20.03.2023 inter alia assailing a detention order dated 13.12.2022 bearing reference B3/D.O.No.71/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Mr.K.Venkatesan, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is



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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] in Crime No.407 of 2022 on the file of Arakkonam Town 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, 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 there is non-application of mind since the Detaining Authority has relied on a similar case which is not similar in nature.

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 05.06.2023 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 two adverse cases. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.407 of 2022 on the file of Arakkonam Town Police Station for alleged offences under Sections 8(c) read with 20(b)(ii)(B) 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.K.Venkatesan, 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, learned counsel for petitioner projected his argument on the ground that there is non-application of mind since the Detaining Authority has relied on a similar case which is not similar in nature but in the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining



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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:

'5.....As far as the ground case is concerned, in a similar case registered at Vellore NIB-CID Crime No.64/2017 under Section 8(c) read with 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985, bail was granted by the court of Special Judge for EC Act cases, Salem in Crl.M.P.No. 552/2017 to Tvl.Rajavel, S/o.Madhu and Madhu, S/o.Pappannan on 02.01.2018. As bails are being granted by courts in such cases, there is a most likely of he (Thiru.Sasikumar @ Gowtham) coming out on bail by filing any bail application in appropriate court.....'

6. Learned counsel submitted that aforementioned bail order in 'Rajavel's case' 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 02.01.2018 made by the learned Special Judge for EC Act Cases, Salem is a default bail under Section 167(2) of 'The Code of



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Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] and therefore the subjective satisfaction is impaired.

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 is liable to be dislodged.



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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 13.12.2022 bearing reference B3/D.O.No.71/2022 made by the second respondent is set aside and the detenu Thiru.Sasikumar @ Gowtham, aged 26 years, son of Thiru.Balaji, 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.)
31.07.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem.



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To

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Ranipettai District
3. The Superintendent of Prison
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6. The Public Prosecutor,
High Court, Madras.



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

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