



WEB COPY



H.C.P.No.482 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.482 of 2023

Poonguzhalarasi

.. Petitioner

VS

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

2.District Collector and District Magistrate of
Ranipet District, Ranipet – 1.

3.The Superintendent of Police,
Ranipet District.

4.The Superintendent,
Central Prison, Vellore.

5.The Inspector of Police,
Ranipet Police Station,
Ranipet 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 the detention order passed by the second respondent pertaining to the order made in B3/D.O.No.05/2023 dated 27.02.2023 in detaining the detenu under Section 2(f) of



H.C.P.No.482 of 2023

Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu Subakar @ Subash, son of Sekar, aged about 33 years, who is detained at Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.G.Nirmal Krishnan
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 29.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 21.03.2023 inter alia assailing a detention order dated 27.02.2023 bearing reference B3/D.O.No.05/2023 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 341, 294(b), 323, 324, 392, 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.57 of 2023 on the file of Ranipet 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



WEB COPY



H.C.P.No.482 of 2023

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 detenue 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 29.03.2023 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 preventive detention order is Crime No.57 of 2023 on the file of Ranipet Police Station for the alleged offences under Sections 341, 294(b), 323, 324, 392, 397, 506(ii) of 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.



H.C.P.No.482 of 2023

4. Mr.G.Nirmal Krishnan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from paragraph 5 of the Admission Board order dated 29.03.2023, at the time of admission, learned counsel for petitioner posited his argument on the ground that some of the pages in the grounds booklet furnished to the detenu are not readable, however, 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 qua imminent possibility of detenu being enlarged on bail is impaired.

6. Elaborating on the above 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.....As far as the ground case concerned, in a similar case registered at Siva Kanchi Police Station Crime No.2162/2020, under section 294(b), 307, 392, 397, 506(ii) IPC bail was granted to the accused Thiru.Perumal @ Bullet Perumal by the Court of the District and Sessions Judge-II, Kancheepuram in Crl.M.P.No.1191/2020 on 03.07.2020....'



H.C.P.No.482 of 2023

7. Learned counsel submitted that aforementioned subjective satisfaction has been arrived at by the Detaining Authority by relying on *Perumal's case* bail order being bail order dated 03.07.2020 in CrI.M.P. No.1191 of 2020 on the file of District and Sessions Judge, District Court No.2, Kancheepuram. Learned counsel adverting to the bail order in *Perumal's case* submitted that the bail order was made in view of directions of Hon'ble Supreme Court in *Suo Motu W.P. (Civil) No.1 of 2020* owing to the 'Corona virus Pandemic and consequent lock down' which shall hereinafter be referred to as 'Covid-19 situation' which cannot be made applicable to the ground case qua bail as on the date of impugned preventive detention order Covid 19 situation had paled into past.

8. In response to the above argument, learned Prosecutor submitted to the contrary and said that the alleged offences in ground case and *Perumal's case* are broadly comparable.

9. We had the benefit of perusing the bail order in *Perumal's case* and we find that submission made by learned counsel for petitioner is acceptable. The reason is, a portion of the bail order of learned Sessions Judge in *Perumal's case* reads as follows:



'7. In pursuant to the directions of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.1 of 2020 In Re: Contagion of Covid 19 virus in prisons also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court and in furtherance to the directions of the Hon'ble Chief Justice of our Hon'ble High Court vide letter dated 21.03.2020 and considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection and spreading of the virus, this Court finds that it is essential that the prisons are decongested as much as possible. Considering the above stated circumstances and in the interest of justice this Court is inclined to allow the petition with the following conditions...'

10. It is clear that *Perumal's* case bail order is one where bail has been granted primarily owing to the then obtaining Covid-19 situation and orders of Hon'ble Supreme Court in this regard. Therefore, taking *Perumal's* case bail order as a benchmark for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. Owing to this, we have no hesitation in saying that the impugned preventive detention order is one where subjective satisfaction arrived at by the detaining authority is vitiated and therefore it



H.C.P.No.482 of 2023

deserves to be dislodged.

WEB COPY

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.02.2023 bearing reference B3/D.O.No.05/2023 made by the second respondent is set aside and the detenu Thiru.Subakar @ Subash, aged 33 years, son of Thiru.Sekar, 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
mmi

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

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 of
Ranipet District, Ranipet – 1.
- 3.The Superintendent of Police,
Ranipet District.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Inspector of Police,



H.C.P.No.482 of 2023

Ranipet Police Station, Ranipet District.

WEB COPY

6.The Public Prosecutor,
High Court, Madras.

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

mmi

H.C.P.No.482 of 2023

31.07.2023