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H.C.P.No.493 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

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

H.C.P.No.493 of 2023

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.. Petitioner

VS

- 1.The State of Tamil Nadu rep. By
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Mayiladuthurai District, Mayiladuthurai.
- 3.The Superintendent of Police,
Mayiladuthurai District, Mayiladuthurai.
- 4.The Superintendent of Prison,
Central Prison, Tiruchirappalli.
- 5.The Inspector of Police,
Sirkazhi Police Station,
Mayiladuthurai 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 dated 04.03.2023 passed by the second respondent in his proceedings in C.O.C.No.08/2023 and quash the same and direct the respondents herein to produce the



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petitioner's son namely Keerthikaran, son of Munusamy, aged about 22 years, who is presently undergoing detention in the Central Prison, Tiruchirappalli as Goonda before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Vinoth
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 31.03.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 23.03.2023 inter alia assailing a detention order dated 04.03.2023 bearing Reference C.O.C. No.08/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. *Mr.M.Vinoth, 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 147, 148, 341, 302 read with 149 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into one under Sections 147, 148, 302, 149, 120B, 342, 427, 294(b), 506(ii) IPC in Crime No.542 of 2022 on the file of Sirkazhi Police Station.*



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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 there is an inordinate 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 31.03.2023 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 two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.542 of 2022 on the file of Sirkazhi Police Station for the alleged offences under Sections 147, 148, 341, 302 read with 149 of IPC subsequently altered into one under Sections 147, 148, 302, 149, 120B, 342, 427, 294(b) and



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506(ii) 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.M.Vinoth, 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 31.03.2023, at the time of admission, learned counsel for petitioner posited his argument on the point that there is inordinate delay in passing the detention order, however, in the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the ground that similar case relied on by the detaining authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is not really similar.

6. Elaborating on the above submission, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and the same reads as follows:



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'4..... In similar case (i.e)(1)Crime Number 358/2021 u/s 147, 148, 294(b), 452, 323, 324, 302 IPC of Mayiladuthurai Police Station, bail was granted by the court of Hon'ble High Court, Chennai in CrI.O.P.No.9350/2021 dated 23.08.2021 to an accused by name Thiru.Ranjith, S/o.Neelamegam and (2) in Crime Number 692/2022 u/s 341, 294(b), 352, 506(ii), 302 IPC of Mayiladuthurai Police Station, bail was granted by the Court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P.No.03/2023 dated 12.01.2023 to an accused by name Thiru.Arul, S/o.Rayappan...'

7. It is clear from the aforementioned portion of paragraph 4 of the grounds of impugned preventive detention order that the detaining authority has relied on two bail orders for arriving at aforementioned subjective satisfaction. As regards the first of the bail orders, it is a bail order of a Hon'ble Single Judge of this Court dated 23.08.2021 in CrI.O.P.No.9350 of 2021 (hereinafter '*Ranjith's case*' for convenience as Ranjith is the petitioner in this case) but what has been furnished to the detenu at pages 196 and 197 of the grounds booklet (Tamil translation at pages 198 and 199) is not the bail order but an order relaxing condition/s of bail. To be noted, copy of bail order has not been furnished to the detenu. Therefore, this clearly impairs the rights of the detenu to make an



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effective representation against the impugned preventive detention order and this further means that constitutional safeguard ingrained in Article 22(5) of the Constitution of India and recognised in Section 8(1) of Act 14 of 1982 has been subjected to infraction. This apart, there is yet another aspect of the matter. The relaxation (of bail conditions) order has been made in Crl.M.P.No.8148 of 2021 in Crl.O.P.No.9350 of 2021 is dated 23.08.2021. A careful perusal of the relaxation order brings to light that bail has been granted by a Hon'ble Single Judge of this Court much earlier as one other condition had been relaxed on 19.05.2021 itself. This means that detaining authority has got the bail order date also wrong in *Ranjith's case*. In other words, the date of the bail order in *Ranjith's case* has been wrongly given as 23.08.2021 in the grounds of impugned preventive detention order. This shows non-application of mind qua detaining authority and it also baffles the detenu multiplying the infraction of Article 22(5) constitutional principle which is statutorily recognised vide Section 8(1) of Act 14 of 1982.

8. In response to the above argument, learned Prosecutor submitted to the contrary saying that the offence in *Ranjith's case* and the case on hand are comparable and what has happened is



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only a secretarial error.

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9. We carefully considered the submissions made on both sides. On a demurrer, even if the argument that it is a secretarial error is accepted, the Prosecutor's endeavour to sustain the impugned preventive detention order still does not cut ice as the bail order has not been furnished to the detenu impairing the constitutional right (to make an effective representation against a preventive detention order) which has been statutorily recognised as alluded to supra. This means that the impugned preventive detention order is vitiated and the same deserves to be dislodged.

10. We are also informed without any disputation by both sides that co-accused in the ground case were also clamped with identical preventive detention orders, co-accused assailed the same vide H.C.P.Nos.428, 486 and 500 of 2023 and these HCPs were allowed in and by an order dated 31.07.2023 by this Bench on the same point.

11. Ergo, the sequitur is, captioned HCP is allowed. Apropos, impugned preventive detention order dated 04.03.2023 bearing reference C.O.C.No.08/2023 made by the second respondent is set



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aside and the detenu Thiru.Keerthikaran, aged 22 years, son of Thiru.Munusamy, 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, Tiruchirappalli.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Mayiladuthurai District, Mayiladuthurai.
- 3.The Superintendent of Police,
Mayiladuthurai District, Mayiladuthurai.
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Mayiladuthurai District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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