



H.C.P.No.503 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

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

H.C.P.No.503 of 2023

B.Jayamarri

.. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. By its Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai -9.

2.The District Collector and District Magistrate,
Mayiladuthurai District, Mayiladuthurai.

3.The Superintendent of Police,
Mayiladuthurai District, Mayiladuthurai.

4.The Inspector of Police,
Prohibition Enforcement Wing, Sirkazhi,
Sirkazhi, Mayiladuthurai District.

5.The Superintendent,
Central Prison, Thiruchirappalli,
Thiruchirappalli District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus calling upon the
production of the records relating to the detention order dated
08.03.2023 made in C.O.C.No.12/2023 passed by the second



H.C.P.No.503 of 2023

respondent herein quash the same and direct the respondents to produce the body of the detenu Bharathi, Male, aged 48 years, son of Thiagarajan, who has been detained in Central Prison, Thiruchirappalli, before this Court and set at liberty.

For Petitioner : Mr.C.Venkatesan
for Mr.R.Murugabharathi

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

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity, convenience and clarity).

2. Captioned HCP was listed in the Admission Board on 05.04.2023 and the following order was made:

H.C.P.No.503 of 2023

M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

(Order of the Court was made by **M.SUNDAR, J.,**)

Captioned Habeas Corpus Petition has been filed in this Court on 27.03.2023 inter alia assailing a detention order dated 08.03.2023 bearing Reference C.O.C. No.12/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.



WEB COPY



H.C.P.No.503 of 2023

2. *Wife of the detenu is the petitioner.*
3. *Mr.R.Muruga Bharathi, 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 4(1)(i), 4(1)(aaa) r/w 4(1-A) of Tamil Nadu Prohibition Act and Rules 4 and 5 of Tamil Nadu Rectified Spirit Rules, 2000 in Crime No.70 of 2023 on the file of Sirkazhi Prohibition Enforcement Wing.*
4. *The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) 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 grounds that the arrest of the detenu has not been intimated to the family members of the detenu and several pages in the booklet furnished to the detenu are not legible.*
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.'*

3. The aforementioned Admission Board order dated 05.04.2023 captures all essentials i.e., essentials imperative for appreciating this order and therefore we are not setting out the same in this final order. It is also made clear that the short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant final order also for the sake of convenience and clarity.



H.C.P.No.503 of 2023

WEB COPY

4. Before we proceed further, we make it clear that 'detention order dated 08.03.2023 bearing reference C.O.C. No.12/2023 made by the detaining authority' shall hereinafter be referred to as the 'impugned preventive detention order' for the sake of convenience and clarity.

5. As would be evident from paragraph 5 of the 05.04.2023 Admission Board order, at the time of admission, learned counsel for petitioner posited his challenge against the impugned preventive detention order on the grounds that the arrest of the detenu had not been intimated to the family members and several pages in the booklet furnished to the detenu are not readable but in the Final Hearing Board today, Mr.C.Venkatesan, learned counsel representing the counsel on record for petitioner changed his line of attack qua his campaign against the impugned preventive detention order and submitted that the impugned preventive detention order is vitiated by non-application of mind as the detaining authority has looked at an anticipatory bail order made by a Hon'ble Single Judge of this Court and proceeded on the basis that it is a bail order. Elaborating his submission in this direction, learned counsel drew our attention to a

Page Nos.4/9



portion of paragraph 5 of the grounds of impugned preventive detention order, which reads as follows:

'5..... In similar case (i.e) (1) Crime Number 591/2021, u/s 4(1)(aaa), 4(1)(i) r/w 4(1-A) of TNP Act & Section 4, 5 of Tamil Nadu Rectified Spirit Rules, 2000 of Sirkazhi Prohibition Enforcement Wing, bail was granted by the Hon'ble High Court, Chennai in Crl.O.P.No.10112/2021 dated 16.06.2021 to an accused by name Thiru.Kuttyman @ Dharma S/o.Durai @ Tamilselvan and (2)Crime Number 855/2021, u/s 4(1)(aaa), 4(1)(i) r/w 4(1-A) of TNP Act & Sections 4, 5 of Tamil Nadu Rectified Spirit Rules, 2000 of Mayiladuthurai Prohibition Enforcement Wing, bail was granted by the court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P.No.2008/2021, dated 26.07.2021 to an accused by name Thiru.Azhagarsamy, S/o.Manithevar.

Eventhough he has not filed any bail petition for the above case in any court till the date but by considering the above mentioned similar cases I am satisfied that there is a real and imminent possibility of Thiru.Bharathi, male, aged 48/2023, S/o.Thiyagarajan coming out on bail by filing a bail application in the near future for the above case before the Higher Court....'

6. Thereafter, learned counsel drew our attention to the grounds booklet which contains the aforementioned 16.06.2021 order made by a Hon'ble Single Judge of this Court in Crl.O.P. No.10112 of 2021. We had the benefit of perusing the grounds booklet and we find that the aforementioned 16.06.2021 order is an anticipatory bail order as rightly pointed out by the learned counsel for petitioner.



H.C.P.No.503 of 2023

WEB COPY

7. In response to the above argument, learned Prosecutor submitted that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail cannot be found fault with as anticipatory bail itself has been granted for similar offences.

8. We carefully considered the submissions made on both sides.

9. We find that it may not be necessary to embark upon a legal drill of testing the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail. The reason is, the impugned preventive detention order gets vitiated owing to non-application of mind. After referring to order dated 16.06.2021 in CrI.O.P. No.10112 of 2021 made by a Hon'ble Single Judge of this Court, the detaining authority has proceeded on the basis that it is a bail order under Section 439 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity] whereas it is a anticipatory bail order under Section 438 of Cr.P.C. Therefore, we have no hesitation in sustaining the submission of learned counsel for petitioner that the impugned



H.C.P.No.503 of 2023

preventive detention order is vitiated by non-application of mind qua detaining authority.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 08.03.2023 bearing reference C.O.C.No.12/2023 made by the second respondent is set aside and the detenu Thiru.Bharathi, aged 48 years, Son of Thiru.Thiyagarajan, 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.)
04.09.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai -9.
- 2.The District Collector and District Magistrate,
Mayiladuthurai District,
Mayiladuthurai.

Page Nos.7/9



H.C.P.No.503 of 2023

3.The Superintendent of Police,
Mayiladuthurai District, Mayiladuthurai.

4.The Inspector of Police,
Prohibition Enforcement Wing, Sirkazhi,
Sirkazhi, Mayiladuthurai District.

5.The Superintendent,
Central Prison, Thiruchirappalli,
Thiruchirappalli District.

6.The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.503 of 2023

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

mmi

H.C.P.No.503 of 2023

04.09.2023

Page Nos.9/9