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HCP No.517 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.517 of 2023

I.Ponmalar

W/o.A.Isack Arulraj

.. Petitioner

Vs.

1. The Principal Secretary to the Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The Commissioner of Police
Office of the Commissioner of Police
Tambaram City, Chennai-600 045.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai-600 066.
4. The Inspector of Police
T-10, Manimangalam Police Station
Chennai

..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 in BCDFGISSSV No.204/22 on the file of the second respondent, set aside the detention order



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dated 29.11.2022 and direct the second respondent to produce A.Isack Arulraj, son of Ayyadurai, aged about 42 years, presently detained at the Central Prison, Puzhal, Chennai under the Tamil Nadu Act 14 of 1982 as a GOONDA, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Prabhakaran
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 05.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 28.03.2023 inter alia assailing a detention order dated 29.11.2022 bearing Reference BCDFGISSSV No.204/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

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

3. *Mr.K.Balasubramaniam, 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 341, 294(b), 392 r/w 397, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and*



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clarity] in Crime No.338 of 2022 on the file of T-10 Manimangalam 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, Shum-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 some of the pages in the booklet furnished to the detenu are not legible, which prevented the detenu from making 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 05.04.2023 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.



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3. There are eight adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.338 of 2022 on the file of T10- Manimangalam Police Station for alleged offences under Sections 341, 294(b), 392 r/w 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.

4. Mr.R.Prabhakaran, 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 support affidavit *qua* captioned HCP, several grounds have been raised/urged but in the hearing i.e., in the final disposal hearing, Mr.R.Prabhakaran, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on one point which has cut ice with us. That one point which has cut ice with us turns on subjective satisfaction arrived at by the detaining authority as regards the imminent possibility of the detenu being enlarged on bail.



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6. Elaborating on the aforementioned submission, learned counsel drew the attention of this Court to a portion of paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows:

'4. He hasn't filed any bail petition in the ground case. Further, it is pertinent to note that in a similar case, registered at Sankar Nagar P.S. Cr.No.617/2021 u/s.341, 336, 427, 392, 397, 506(ii) IPC, bail was granted to the accused Vinoth Kumar @ Vinoth by the Principal Sessions Judge of Kancheepuram District at Chengalpattu in CrI.M.P.No.5200/2021 on 20.11.2021. Hence, I infer that it is very likely of his coming out on bail in T-10, Manimangalam Police Station Cr.No.338/2022 since in the similarly cases, bails were granted by the courts after a lapse of time.'

7. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that the detaining authority has noticed that the detenu has not filed any bail petition. Be that as it may, it was further submitted by learned counsel that the detaining authority has relied on a 'bail order dated 20.10.2021 in CrI.M.P.No.5200 of 2021 on the file of Principal Sessions Judge, Kancheepuram District, Chengalpattu' [hereinafter referred to as '**Vinoth Kumar** case' for the sake of convenience] to arrive at subjective satisfaction



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that there is imminent possibility of detenu being enlarged on bail. Learned counsel went on to submit that in **Vinoth Kumar** case, learned Sessions Judge has exercised the discretion to grant bail owing to there being no bad antecedents *qua* Vinoth Kumar. In this regard, learned counsel drew our attention to one portion of **Vinoth Kumar** case bail order and the same reads as follows:

' Further, no bad antecedent is reported against the petitioner. '

8. In response to the aforementioned argument, learned Prosecutor submitted to the contrary that the offences in **Vinoth Kumar** case and the ground case are broadly comparable.

9. We are unable to accept the submission of learned Prosecutor as it is not merely the offences or the charge that are to be compared but the determinants/parameters for relief of grant of bail also need to be compared. In **Vinoth Kumar** case as alluded to *supra* there are no bad antecedents against Vinoth Kumar and this has been recorded by learned Sessions Judge in the bail order itself. As regards the impugned preventive detention order, even according to detaining authority there are as many as eight adverse cases and therefore, comparing **Vinoth Kumar** case bail order with the



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ground case is an exercise which reminds one of the age-old adages 'comparing Apples and Oranges' and 'comparing cheese and chalk'. As the comparison is bad, the sequitur is subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is clearly impaired. This means the further sequitur is impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.11.2022 bearing reference BCDFGISSSV No.204/2022 made by the second respondent is set aside and the detenu Thiru.A.Isack Arulraj, male, aged 42 years, son of Thiru.Ayyadurai, 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.)
26.06.2023

Index : Yes
Speaking
Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai-66.



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

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