



H.C.P.No.633 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

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

H.C.P.No.633 of 2023

Nagapushpa

.. Petitioner

Vs

1. State of Tamil Nadu rep. By
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.

2. The Commissioner of Police,
Greater Chennai, Vepery, Chennai – 8.

3.The Superintendent,
Central Prison, Puzhal, Chennai - 66.

4.The Inspector of Police,
Saidapet 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 relating to the detention order BCDFGISSSV No.46/2023 dated 20.02.2023 passed by the second respondent and quash the same and direct the respondents to produce the detenu Sakthivel, S/o. (late)

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Srinivasan, aged about 22 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Ms.M.Kruthika
for Mr.K.Nivesh Kumar

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 20.04.2023, the following order was made:

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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 28.03.2023 inter alia assailing a detention order dated 20.02.2023 bearing reference BCDGIISSSV No.46/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Section 302



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of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently, altered into Sections 147, 148, 342, 302, 506(ii) read with 149 of IPC in Crime No.31 of 2023 on the file of J-1 Saidapet 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 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 grounds booklet furnished to the detenu are illegible which prevented the detenu 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 Admission Board captures all essentials

that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3. Ms.M.Kruthika, learned counsel representing the counsel on



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record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. To be noted, 'order dated 20.02.2023 bearing reference BCDFGISSSV No.46/2023' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

5. Both sides submitted without any contestation that in the ground case (to be noted, the impugned preventive detention order in the captioned matter is predicated on one ground case i.e., solitary case and that solitary case constitutes the sole substratum of the impugned preventive detention order), there was another accused by name Ashok Kumar, son of Kuppusamy and the preventive detention order was challenged by his mother by way of H.C.P. No. 688 of 2023 and this HCP was allowed by this Court in and by an order dated 07.08.2023. A scanned reproduction of the same is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MSUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.633 of 2023

Vanitha
W/o.Kuppusamy

.. Petitioner / mother of Detenu
Vs.

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

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

3.The Superintendent of Police,
Central Prison,
Puzhal, Chennai.

4.The Inspector of Police,
J1, Saidapet Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for
issuance of a writ of habeas corpus to produce the body of the petitioner's

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son namely Ashokkumar, aged about 22 years, who is detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order in Proceedings No.BCDFGISSSV No.48/2023, dated 21.02.2023, on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.B.Gopalakrishnan

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

ORDER

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

This order will now dispose of the captioned matter.

2. When the captioned matter was listed in the admission board on 26.04.2023, the following order was made by this Court.

Captioned Habeas Corpus Petition has been filed in this Court on 20.03.2023 inter alia assailing a detention order dated 21.02.2023 bearing reference BCDFGISSSV No.48/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

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2. Mother of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case *quo the detenu* is for alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.31 of 2023 on the file of J-1 Saidapur 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, Sunk-offenders, Sexual-offenders, Slum-grabbers and Video Pirater 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 the subjective satisfaction arrived at by the Detaining Authority regarding imminent possibility of the detenu being enlarged on bail is without any material.

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 order / proceedings shall now be read as an integral part and parcel of this order. This means that the short forms, short



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references and abbreviations used in the earlier order dated 26.04.2023 will continue to be used in the instant order also.

4. There are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.31 of 2023 on the file of J-1 Saidapet Police Station for an alleged offence under Section 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

5. Mr.B.Gopalakrishnan, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6. Learned counsel for the petitioner both in the Admission Board as well as in the final hearing Board 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

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being enlarged on bail is flawed & impaired. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows:

'... Further, in a similar case, registered at R-3 Ashok Nagar P.S. Cr.No.59/2021 w/s 147, 148, 449, 324 and 302 IPC, the bail was granted to the accused Thiru Balaji by the Court of learned Principal Sessions, Chennai, in Cr.M.P.No.10483/2021. Further, in a similar case, registered at T-16 Nasarathpet P.S. Cr.No.775/2020, w/s.384 and 306(ii) IPC, the bail was granted to the accused Thiru.Naresh Kumar @ Naresh by the Court of learned Judicial Magistrate No.1, Poonamallee, in Cr.M.P.No.2128/2020. Hence, I infer that there is a real possibility of his coming out on bail in J-1 Saidapet Police Station Crime Nos.31/2023 and 32/2023 by filing bail application, since in similarly placed cases, bails were granted by the courts after a lapse of time. ...'

7. Adverting to the aforesaid portion of the grounds of impugned preventive detention order, learned counsel drew our attention to the grounds booklet served on the detainee and more particularly to pages 689 to 693 thereof. In pages 689 to 693 of the grounds booklet bail order in Cr.M.P.No.10485 of 2021 (Crime No.59/2021 on the file of R-3 Ashok Nagar Police Station) has been furnished to the detainee. To be noted, this

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26.05.2021 bail order is in the case of one Balaji and therefore this order shall be referred to as **Balaji's** case. We had the benefit of perusing this **Balaji's** case bail order. We find that **Balaji's** case bail order turns largely on then obtaining Covid-19 situation. This is articulated in Paragraph 5 of the bail order of the learned Sessions Judge and the relevant portion of Paragraph 5 reads as follows:

'5. ... existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition ...'

8 We also noticed that **Balaji's** case bail order is dated 26.05.2021 and it was at a time when the hearings were only on a videoconferencing platform (virtual hearings).

9. In response to the above point, learned Additional Public Prosecutor submitted to the contrary and said that the two cases are largely comparable. After perusing **Balaji's** case bail order we are unable to accept this submission as determinants and parameters applied therein are completely different *inter alia* owing to reason delineated supra. Therefore, we have no difficulty in coming to the conclusion that the subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu

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being enlarged on bail is impaired. This means that the impugned detention order is vitiated and it deserves to be dislodged.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.02.2023 bearing reference BCDFGSSSV No.48/2023 made by the second respondent is set aside and the detainee Thiru.Ashok Kumar, aged 22 years, son of Thiru.Kuppusamy 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.)

07.08.2023

Index : Yes

Speaking order

Neutral Citation : Yes

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

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6. There is also no disputation that the point on which Ashok Kumar's (co-accused) preventive detention order was set aside/interfered with is available qua impugned preventive detention order in the captioned matter also. This reminds us of the age old adage 'Sauce to Goose is sauce to Gander too'. This means that the impugned preventive detention order also deserves to be dislodged.

7. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 20.02.2023 bearing reference BCDFGISSSV No.46/2023 made by the second respondent is set aside and the detenu Thiru.Sakthivel, aged 22 years, Son of (late) Thiru.Srinivasan, 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.)
14.08.2023

Index : Yes

Neutral Citation : Yes

mmi

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



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To

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1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai -9.
2. The Commissioner of Police,
Greater Chennai, Vepery, Chennai – 8.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai - 66.
- 4.The Inspector of Police,
Saidapet Police Station, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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

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