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HCP NO.567 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

**THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.NO.567 OF 2023

V.Jayanthi

.. Petitioner

Vs.

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

2.The District Collector and
District Magistrate at Chengalpattu
Chengalpattu District,
Pincode – 603 307.

3.The Superintendent of Police
Chengalpattu District,
Pincode – 603 307.

4.The Superintendent
Central Prison
Puzhal, Chennai – 600 066.

5.The Inspector of Police
Maduranthakam PEW PS,
Chengalpattu District.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records pertaining to the order of detention passed by the second respondent in Order No.CPT No:16/2023 dated 23.02.2023 quash the same, direct to produce the detenu Thiru. Vadivel, Son of Mr.Govindan, aged about 40 years, presently detained in Central Prison at Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Ganesh 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 13.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 30.03.2023 inter alia assailing a detention order dated 23.02.2023 bearing reference CPT No.16/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and



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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 4(1)(aaa), 4(1)(b), 4(1)(g), 4(1)(h), 4(1-A) of the Tamil Nadu Prohibition Act, 1937 read with Rules 7 and 11 of the Tamil Nadu Rectified Spirit Rules 2000 (Transporting) and Sections 468, 471 and 420 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.118 of 2023 on the file of Madhuranthagam 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].



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5. The detention order has been assailed inter alia on the ground that there is delay in passing the impugned 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 13.04.2023 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.

3.The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.118 of 2023 on the file of Madhuranthagam Prohibition Enforcement Wing for the alleged offence under Sections 4(1)(aaa), 4(1)(b), 4(1)(g), 4(1)(h) and 4(1-A) of Tamil Nadu Prohibition Act 1937 read with 7 and 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting) and 468, 471 and 420 of IPC.



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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.

4.Mr.R.Ganesh Kumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.Though in the admission board the petitioner's campaign against the impugned preventive detention order was predicated on the point that there is delay in making the impugned preventive detention order, in the final hearing today learned counsel on record for petitioner submitted that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is impaired owing to comparison with a dissimilar case. In this regard, elaborating on this point, learned counsel drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order and the same reads as follows:



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In Prohibition Enforcement Wing,

*Mamallapuram Cr.No.1688/2020 u/s. 4(1)(aaa), 4(1-A)
Tamil Nadu Prohibition Act r/w.6 & 11 of Tamil Nadu
Rectified Spirit Rules 2000 (Transporting) against the
similar accused Raji, S/o.Murugan was released on bail
through Principal District and Sessions Court,
Chengalpattu in Crl.M.P.No.2698/2020 on 25.08.2020;*

*Hence I infer that there is a real possibility of his
coming out on bail if he applied bail petition in the
above ground case since in similar cases, bails are granted
by the Court after lapse of time...'*

6.The aforementioned Raji's case bail order has been
furnished to the detainee as part of the grounds booklet. We had the benefit
of perusing Raji's case bail order, the relevant portion in Raji's case bail
order reads as follows:

*'.....In furtherance to the directions of the Hon'ble
Chief Justice of High Court, Madras vide letter dated
21.03.2020 and pursuant to directions of the Hon'ble
Supreme Court in Suo Motu W.P.(Civil) No.1/2020 In*



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Re: Contagion of COVID 19 Virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible. Keeping this in view and also taking note of the duration of custody, facts and circumstances of the case the petitioner / accused is ordered to be released on bail forthwith...'

7.The aforementioned portion of Raji's case bail order is a clear case of then prevalent COVID-19 situation and the bail order speaks for itself in this regard. In other words, learned counsel for petitioner urges one point i.e., in Raji's case bail has been granted by the learned Sessions Judge owing to the then obtaining Covid-19 situation and therefore the same does not apply to the case on hand as the date of the impugned preventive detention order is 23.02.2023.

8.The comparison of the case on hand with Raji's case bail order is clearly a flawed comparison which reminds one of the age old



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adage 'comparing Apples and Oranges'. We also remind ourselves that imminent possibility of being enlarged on bail is not qua time but qua probability. In this view of the matter, as the subjective satisfaction arrived at by the Detaining Authority is flawed, the impugned preventive detention order is vitiated and the same deserves to be dislodged.

9.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 23.02.2023 bearing reference CPT No.16/2023 made by the second respondent is set aside and the detenu Thiru. Vadivel, aged 40 years, Son of Thiru. Govindhan 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.

J.]

[M.S., J.]

[R.S.V.,

31.07.2023

Index : Yes

Neutral Citation : Yes

Speaking / Non-speaking order

TK

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



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- 6.The Public Prosecutor
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R.SAKTHIVEL, J.

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