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HCP NO. 540 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

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

H.C.P.NO.540 OF 2023

Mayilarasan

.. Petitioner

Vs.

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

2.The Commissioner of Police
Office of the Commissioner of Police
Avadi City,
Thiruvallur District.

3.The Superintendent of Prison
Central Prison at Puzhal
Chennai – 600 066.

4.The Inspector of Police
Poonamallee PEW Police Station
Avadi City, Thiruvallur District.

.. Respondents

1/10



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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 records in Detention Order in No.195/ BCDFGISSSV/2022 dated 29.12.2022 on the file of the second respondent and set aside the same and direct the respondents herein to produce the body of the petitioner / detenu Mayilarasan S/o. Rajendran aged 24 years now confined in Central Prison at Puzhal before this Court and set him at liberty.

For Petitioner : Mr.S.Selvakumar
for Mr.M.Mohamed Saifulla

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 11.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 31.03.2023 inter alia assailing a detention order dated 29.12.2022 bearing reference No. 195/BCDFGISSSV/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. To be noted, detenu himself is the petitioner.

3. Mr.M.Mohamed Saifulla, 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 8(c) read with 20(6)(ii)(C), 27A and 29(i) of NDPS Act, 1985 in Crime No.640 of 2022 on the file of Prohibition Enforcement Wing, Poonamallee.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 'live and proximate link' between the grounds of detention and purpose of detention had snapped as there is a delay in passing the detention order.



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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 11.04.2023 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 is the sole substratum of the impugned detention order is Crime No.640 of 2022 on the file of Prohibition Enforcement Wing, Poonamallee Unit for alleged offences under Section 8(c) r/w 20(b)(ii)(C), 27A and 29(i) of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' 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.



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4. Mr. S. Selvakumar, learned counsel representing

Mr. M. Mohamed Saifulla, 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 'live and proximate link' between the grounds of detention and purpose of detention had snapped as there is a delay in passing the detention order, in the final hearing learned counsel 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 being enlarged on bail is flawed.

Elaborating on this argument, learned counsel drew our attention to paragraph 3 of the impugned preventive detention order and the most relevant portion reads as follows:



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'3...In a similar case registered in D1 Triplicane Police Station Cr.No.932/2020 u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985 bail was granted by the Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.1842/2020. Hence, I infer that there is a real possibility of his coming out on bail in Prohibition Enforcement Wing, Poonamallee Unit Crime No.640/2022 case by filing bail application before the appropriate court, since in a similar case, the bail was granted by the court after a lapse of time... '

Learned counsel submitted that the aforementioned portion shows that the subjective satisfaction of the detaining authority has been arrived at by comparing a bail order in Crl.M.P.No.1842/2020 dated 15.12.2020 [Rakesh Vs. The Inspector of Police] ('Rakesh's case' for the sake of convenience and brevity) but Rakesh's case is intermediate quantity under Section 20(b)(ii)(B) of NDPS Act whereas the ground case is one of alleged commercial quantity under Section 20(b)(ii)(C) of NDPS Act.



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6. In response to the aforementioned argument, learned Prosecutor submitted that the ground case as well as ***Rakesh's case*** bail order are qua the same substance under NDPS Act and are therefore comparable.

7. We carefully considered the rival submissions and we find that the aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is impaired because the parameters and determinants for grant of discretionary relief of bail should also be taken into account while comparing a case with another case to arrive at subjective satisfaction regarding imminent possibility of detenu being enlarged on bail. In the light of Section 37 of NDPS Act, which is in the nature of a statutory bar qua bail in commercial quantity cases, we have no difficulty in saying that the statute itself recognises a distinction between 'in between quantity/intermediate quantity' under Section 20(b)(ii)(B) of NDPS Act and 'commercial quantity' under Section 20(b)(ii)(C) of NDPS Act when it comes to grant of bail and therefore comparison of one with the other to arrive at aforementioned subjective satisfaction is clearly a flawed exercise and this reminds us of the age old adages 'comparing apples and oranges' and 'comparing cheese and chalk'.



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8. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.12.2022 bearing reference No.195/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru. Mayilarasan, aged 24 years, son of Thiru. Rajendran, 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/No

Neutral Citation : Yes/No

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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To

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5. The Public Prosecutor
High Court, Madras.



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