



H.C.P.No.562 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.562 of 2023

M.Revathi
W/o.Manikandan

.. 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 - 603 307.
3. The Superintendent of Police
Chengalpattu District - 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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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of 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:19/2023 dated 07.03.2023, quash the same and direct to produce the detenu Thiru.Manikandan @ Appu, son of Thiru.Sekar, aged about 32 years and presently detained in Central Prison at Puzhal, Chennai before this Hon'ble 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 12.04.2023, 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 07.03.2023 bearing reference CPT.No.19/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.



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2.Wife of the detenu is the petitioner.

3.Mr.R.Ganesh Kumar, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu was initially registered for an offence under Sections 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act, 1937 read with Rules 6 and 11 of Tamil Nadu Rectified Spirit Rules, 2000 in Crime No.139 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].

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.

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.'



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2. The aforementioned order made in the 12.04.2023 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. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.139 of 2023 on the file of Madhuranthagam Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa), 4(1-A) of 'Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' for the sake of brevity, convenience and clarity] read with Rules 6 and 11 of Tamil Nadu Rectified Spirit Rules, 2000. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve more 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.

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5. At the time of admission i.e., in the Admission Board, 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 was urged but in the final hearing today, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on Raji's case bail order being bail order dated 25.08.2020 in CrI.M.P.No.2698 of 2020 on the file of Court of the Principal Sessions Judge of Kancheepuram District at Chengalpattu. Relevant portion in paragraph No.5 of the grounds of detention reads as follows:

'5.Further, the accused filed bail petition through online before the Principal District and Sessions Court, Chengalpattu on 28.02.2023 in CrI.M.P.No.1209/2023 and the same was pending before the Court and in similar nature of offences similar accused was already released on bail through appropriate Court i.e., in Prohibition Enforcement Wing, Mamallapuram Cr.No.1688 of 2020 u/s 4(1)(aaa), 4(1-A) Tamil



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Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000 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 grounds case since in similar cases, bails are granted by the Court after lapse of time.....'

6. A careful perusal of Raji's case bail order in the grounds booklet, a paragraph thereat brings to light that the then prevailing Covid-19 situation had weighed in the mind of the learned Sessions Judge in granting bail. Relevant portion 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 Rez 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.....'



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7. Learned Prosecutor submitted to the contrary by saying that alleged offences in Raji's case and case on hand are broadly comparable.

8. We carefully considered the rival submissions.

9. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, Raji's case would not apply to the case on hand as the impugned preventive detention order has been made on 07.03.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' is qua probability. Therefore subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which in turn has granted bail owing to then prevalent Covid-19 situation, has impaired the subjective satisfaction leading to the inevitable sequitur that impugned preventive detention order



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is vitiated and that it deserves to be dislodged.

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10. Apropos, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 07.03.2023 bearing reference No.CPT No.19/2023 made by the second respondent is set aside and the detenu Thiru.Manikandan @ Appu, male, aged 32 years, son of Thiru.Sekar, 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.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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



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5. The Inspector of Police
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6. The Public Prosecutor
High Court, Madras.



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and
R.SAKTHIVEL, J.,

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