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HCP No.576 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.576 of 2023

Janagi
W/o.Manavalan

.. Petitioner/
Mother of the detenu

Vs.

1. The State of Tamil Nadu
Represented by Secretary to Government
Home, Prohibition & Excise Department
Fort St. George, Chennai-600 009.
2. The Commissioner of Police / Detaining Authority
Coimbatore City
Coimbatore
3. The Superintendent of Prison
Central Prison
Coimbatore
4. The Inspector of Police
C-1 Kattoor Police Station
Coimbatore City
..Respondents



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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 dated 11.01.2023 passed by the second respondent in his proceedings No.C.No.04/G/IS/2023 and quash the same and direct the respondents herein to produce the petitioner's son namely Murugesan, son of Mariyappan, aged about 31 years, who is presently undergoing detention in the Central Prison, Coimbatore as Goonda before this Court and set him at liberty.

For Petitioner : Mr.M.Vinoth
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] came up for admission on 13.04.2023, this Bench made the following order:

'H.C.P.No.576 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 06.04.2023 inter alia assailing a detention order dated 11.01.2023 bearing reference C.No.04/G/IS/2023 made by 'second



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respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 392 read with 397 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.585 of 2022 on the file of C-1 Kattoor 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 the live and proximate link between the grounds of detention and purpose of detention has snapped as there is delay of 30 days 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.'



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2. The aforementioned Admission Board order captures 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. Mr. M. Vinoth, learned counsel representing the counsel on record for petitioner and Mr. E. Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. To be noted, 'order dated 11.01.2023 bearing reference C.No.04/G/IS/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. As would be evident from paragraph 5 of the Admission Board order, at the time of admission learned counsel for petitioner predicated his challenge to the impugned preventive detention order on the point that live and proximate link between the grounds of detention and purpose of detention has snapped as there is delay of 30 days in passing the impugned detention order, however in the final hearing board today learned counsel



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submitted that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired.

Elaborating on this submission, learned counsel drew our attention to a portion of paragraph No.4 of the grounds of detention and the relevant portion reads as follows:

'4. However, it is learnt from the statement of Tmt.K.Vijaya, wife of M.Murugesan, it is evident that steps are being taken to get bail for the accused in the said adverse cases. Further in Coimbatore City, C-1 Kattoor Police Station, Crime No.555/2021 u/s. 379 IPC (which is registered under similar section of law), bail was granted to the accused N.Vivekanandhan @ Kunjan by the Court of Hon'ble Judicial Magistrate No.II, Coimbatore in C.M.P.No.23807/2021 dated 08.11.2021. Copies of the above order are enclosed in the booklet containing the related documents/records'

6. Learned counsel submitted that aforementioned bail order in 'Kunjan @ Vivekanandan' (hereinafter *Kunjan's case* bail order for the sake of convenience) has been furnished to the detenu as part of the grounds booklet. Adverting to the bail petition as well as the bail order in the grounds booklet, learned counsel submitted that the aforementioned bail order dated



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08.11.2021 made by the learned Judicial Magistrate II, Coimbatore, is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the subjective satisfaction is impaired.

7. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases are broadly comparable.

8. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.



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9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 11.01.2023 bearing reference C.No.04/G/IS/2023 made by the second respondent is set aside and the detenu Thiru.M.Murugesan, male, aged 31 years, son of Thiru.M.Mariyappan, 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
Speaking order
Neutral Citation : Yes
gpa

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



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To

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High Court, Madras.



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