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H.C.P.No.590 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.590 of 2023

Kowsalya

.. Petitioner/Wife of the detenu

Vs

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

2. The Commissioner of Police
Avadi City

3. The Superintendent of Prison
Central Prison, Puzhal
Chennai – 66

4. The Inspector of Police
Prohibition Enforcement Wing
Ambattur Unit, Avadi City
Chennai - 53

.. 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 in connection with the order of detention passed by the second respondent dated 14.02.2023 in Memo No.38/BCDFGISSSV/2023 against the petitioner's husband Dheen Sudhan @ Dheena, male aged 29, son of Dinakaran, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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

ORDER

[Order of the Court was made by **R.SAKTHIVEL, J.,**]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed assailing a 'detention order dated 14.02.2023 bearing reference No.38/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience].



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2. When the captioned HCP was listed in the Admission Board on 17.04.2023, this Court made the following order:

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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 06.04.2023 inter alia assailing a detention order dated 14.02.2023 bearing reference No.38/BCDFGISSSV/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. 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 8(c) read with 20(b)(ii)(C) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.15 of 2023 on the file of Prohibition Enforcement Wing, Ambattur Unit.

4. The aforementioned detention order has been made



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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 some of the pages in the grounds booklet furnished to the detenu are only in English version 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.'

3. The aforementioned order made in the 17.04.2023 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.



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4. 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.15 of 2023 on the file of Prohibition Enforcement Wing, Ambattur Unit for alleged offences under Sections 8(c) read with Section 20(b)(ii)(C) of NDPS Act. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

5. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, the point that some of the pages in the grounds booklet furnished to the detenu are only in English version which prevented the detenu from making an effective representation was urged but in the final hearing Board today, learned counsel predicated his campaign against the impugned preventive detention order on the point that Detaining Authority has relied on a similar case bail order in paragraph 4 of the impugned preventive detention order stating that similar case was registered for offences under Section 8(c) read with Section 20(b)(ii)(B) of NDPS Act, whereas the ground case is registered for offences under Sections 8(c) read



with Section 20(b)(ii)(C) of NDPS Act. Learned counsel submitted that Detaining Authority has not considered and applied his mind before passing the impugned preventive detention order. Further he has not considered the rigour of Section 37 of NDPS Act. Elaborating the said argument, learned counsel drew our attention to two portions i.e., a portion of the order in para 3 and 4 of the grounds of impugned preventive detention order and the same read as follows:

'(3).....Later, the Inspector of Police along with the seized properties and accused Thiru.Sathasivam @ Senthil, Thiru.Dheen Sudhan @ Dheena and Tmt.Kausalya returned to Prohibition Enforcement Wing, Ambattur Unit on 06.01.2023 at 1415 hours and the Inspector of Police registered a case in Prohibition Enforcement Wing, Ambattur Unit Cr.NO.15/2023 u/s.8(c) r/w.20(b)(ii)(C) of NDPS Act, 1985 and taken up for investigation.'

'(4).... 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, Ambattur Unit Crime No.15/2023 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.....'

6. Per contra, learned Prosecutor submitted that both the cases are



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registered under the NDPS Act and therefore, they are broadly comparable
and therefore, learned Prosecutor prayed to dismiss the petition.

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7. We have considered the submissions made on both sides.

8. We find that the aforementioned subjective satisfaction of the Detaining Authority has been arrived at by comparing the bail order in Rakesh's case which is 'intermediate quantity' under Section 20(b)(ii)(B) of NDPS Act for which rigour of Section 37 of NDPS Act will not apply whereas the ground case is one for 'commercial quantity' under Section 20(b)(ii)(C) of NDPS Act and therefore, rigour of Section 37 of NDPS Act would apply and therefore, subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the 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 the subjective satisfaction. 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 '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.

9. In the light of the narrative, discussion and dispositive



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reasoning thus far, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 14.02.2023 bearing reference No.38/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Dheen Sudhan @ Dheena, aged 29 years, son of Thiru.Dinakaran 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 /No

Speaking order/ Non-Speaking order

Neutral Citation : Yes/No

gpa

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



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To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai – 600 009
2. The Commissioner of Police
Avadi City
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai – 600 066
4. The Inspector of Police
Prohibition Enforcement Wing
Ambattur Unit, Avadi City
Chennai - 53
5. The Public Prosecutor
Madras High Court
Chennai



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

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