



H.C.P.No.626 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.626 of 2023

A.Preethi

.. Petitioner

Vs

1. The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
2. The Commissioner of Police,
Tambaram City, Tambaram.
- 3.The Inspector of Police,
Prohibition Enforcement Wing,
Guduvancherry, Chengalpattu District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the entire
records connected with the order of the second respondent herein in
Memo No.11/BCDFGISSSV/2023 dated 24.03.2023 passed against the



H.C.P.No.626 of 2023

petitioner's husband the detenu namely S.Andre @ Anandaraj, son of Sawariyappan, aged about 44 years as a Bootlegger who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.Murugavel
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 20.04.2023, the following order was made:

H.C.P.No.626 of 2023
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 24.03.2023 bearing reference BCDFGISSSV No.11/2023 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.



WEB COPY



H.C.P.No.626 of 2023

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(a), 4(1-A) of TNP Act (Transporting) and Sections 468, 471 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Rules 7 and 11 of Rectified Spirit Rules 2000 in Crime No.56 of 2023 on the file of PEW Guduvanchery Unit.

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 documents pertaining to similar case have not been furnished to the detenu 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.

2. The aforementioned Admission Board captures all 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.



H.C.P.No.626 of 2023

3. Mr.A.Murugavel, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. To be noted, 'order dated 24.03.2023 bearing reference BCDFGISSSV No.11/2023' 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 documents pertaining to similar case have not been furnished to the detenu which prevented the detenu from making an effective representation, however 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

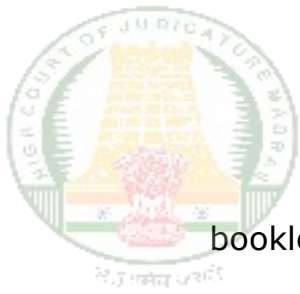


H.C.P.No.626 of 2023

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.4 of the grounds of detention reads as follows:

'5. I am aware that S.Andre @ Anandaraj was remanded to judicial custody in PEW, Guduvanchery Unit Cr.Nos.46/2023 and 56/2023 and he has moved bail petitions for PEW, Guduvanchery Unit Cr.Nos.46/2023 and 56/2023 before the Court of Hon'ble Principal District and Sessions Judge at Chengalpattu, vide CrI.M.P.Nos.1501/2023 and 1502/2023 the same are pending. However, in a case registered under similar sections of law in Madurantakam PS Cr.No.1688 of 2020 u/s 4(1)(aaa), 4(1-A) TNP Act, 6, 11 TN Rectified Spirit Rules 2000 accused Raji, son of Murugan was granted bail by the Hon'ble Principal District and Sessions Judge at Chengalpattu in CrI.M.P.No.2698/2020 dated 25.08.2020. Hence, I infer that it is very likely of his coming out on bail in P.E.W, Guduvanchery Unit Cr.Nos.46/2023 and 56/2023, since in similar cases, bail are granted by the courts after a lapse of time.....'

6. A careful perusal of *Raji's* case bail order in the grounds



H.C.P.No.626 of 2023

booklet, a paragraph thereat brings to light that 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.....'

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



H.C.P.No.626 of 2023

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 is vitiated and that it deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.03.2023 bearing reference BCDFGISSSV No.11/2023 made by the second respondent is set aside and the detenu Thiru.S.Andre @ Anandaraj, aged 44 years, Son of Thiru.Sawariyappan, is directed to be set at liberty forthwith, if not



H.C.P.No.626 of 2023

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

Neutral Citation : Yes

mmi

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

To

1. The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
2. The Commissioner of Police,
Tambaram City, Tambaram.
3. The Inspector of Police,
Prohibition Enforcement Wing,
Guduvancherry, Chengalpattu District.
4. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
5. The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.626 of 2023

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

mmi

H.C.P.No.626 of 2023

14.08.2023

Page Nos.9/9