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H.C.P.No.578 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.578 of 2023

M.Kanniyammal
W/o.Muthukumarasamy

.. Petitioner/Aunty of Detenue

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Prohibition and Excise Department, (Home)
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police,
Tambaram City,
Chennai.

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

4.The Inspector of Police,
T-16, Chemmanchery Police Station,
Chennai.

... 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 detenu's detention order passed by the 2nd respondent BCDFGISSSV No.01/2023 dated 04.01.2023 and set aside the same and produce the detenu Thiru.K.Tamilselvan @ Selva male aged about 21 years S/o.Kolanjiyappan, now detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Dhanasekar

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

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

This order will now dispose of the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity].

2. When the captioned HCP was listed in the admission Board on 20.04.2023, the following order was made by this Court.

'Captioned Habeas Corpus Petition has been filed in this Court on 06.04.2023 inter alia assailing a detention order dated



04.01.2023 bearing reference No.01/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. Aunt of detenu is the petitioner.

3. Learned counsel for petitioner expresses regret for not representing the matter in the previous listing on 13.04.2023. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 323, 392, 336 read with 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.337 of 2022 on the file of T-16 Semmanchery 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 family members of the detenu were not informed about the detention of the detenu.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.



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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 / proceedings shall now be read as an integral part and parcel of this order. This means that the short forms, short references and abbreviations used in the earlier order dated 20.04.2023 will continue to be used in the instant order also.

4. There are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.337 of 2022 on the file of T-16 Semmanchery Police Station for the alleged offences under Sections 341, 294(b), 323, 392, 336 read with 397 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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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5. Mr.S.Dhanasekar, learned counsel for petitioner and Mr.E.Raj

Thilak, learned State Additional Public Prosecutor for all respondents are before us.

6. In the Admission Board, the point that family members of the detenu were not informed about the detention of the detenu was projected, however, today in the final hearing Board, 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 / impaired. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows:

'... Further, in a similar case registered under the similar sections of previous cases (S.7 Madipakkam Police Station in Crime No.223/2022 u/s. 379 of IPC), bail was granted to the accused Murugan @ Suruttai Murugan by the Court of learned Judicial Magistrate No.II, Alandur, Chennai in CrI.M.P.No.1191/2022. Hence, I infer that there is a real possibility of his coming out on bail in T-16 Semmanchery Police Station Crime Nos.290/2022,



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334/2022, 335/2022, 336/2022 and 337/2022 by filing bail application before the appropriate Court, since, in similarly placed cases, bail was granted by the courts after a lapse of time. ...'

7. Adverting to the aforesaid portion of the grounds of impugned preventive detention order, learned counsel drew our attention to the grounds booklet served on the detenue and more particularly to pages 226 and 227 thereat. In pages 226 and 227 of the grounds booklet bail order in CrI.M.P.No.1191 of 2022 (Crime No.223/2022 on the file of Madipakkam Police Station) has been furnished to the detenue. To be noted, this 21.06.2022 bail order is in the case of one Murugan @ Suruttai Murugan and therefore this order shall be referred to as **Murugan's** case. We had the benefit of perusing this **Murugan's** case bail order. We find that **Murugan's** case bail order turns largely on then obtaining Covid-19 situation. This is articulated in the bail order of the learned Judicial Magistrate No.II, Alandur and the relevant portion of the bail order reads as follows:

'.... during this covid-19 pandemic situation, this Court is inclined to grant bail to the petitioner with following conditions.'

8. We also noticed that **Murugan's** case bail order is dated



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21.06.2022 and it was at a time when the hearings were only on a video conferencing platform (virtual hearings).

9. In response to the above point, learned Additional Public Prosecutor submitted to the contrary and said that the two cases are largely comparable. After perusing **Murugan's** case bail order we are unable to accept this submission as determinants and parameters applied therein are completely different *inter alia* owing to reason delineated supra. We also find that in **Murugan's** case, alleged offence is under Section 379 of IPC, which are quite different from the ground case qua impugned detention order on hand as the same turns on Sections 341, 294(b), 323, 392, 336 read with 397 and 506(ii) of IPC. Therefore, we have no difficulty in coming to the conclusion that the subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail is impaired. This means that the impugned detention order deserves to be dislodged.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned



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detention order dated 04.01.2023 bearing reference 01/BCDFGISSSV/2023

made by the second respondent is set aside and the detenu Thiru.K.Tamilselvan @ Selva, aged 21 years, son of Thiru.Kolanjiyappan 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
Speaking order
Neutral Citation : Yes
rsi

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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2. The Commissioner of Police,
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Chennai.
3. The Superintendent of Prison,
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T-16, Chemmanchery Police Station,
Chennai.
5. The Public Prosecutor
Madras High Court, Chennai.



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

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