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H.C.P.No.609 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR**  
and

**THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.No.609 of 2023

Malathi  
W/o.Murali

.. Petitioner

Vs.

1. The Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat, Fort St.George  
Chennai-600 009.
2. The District Collector and District Magistrate  
Chengalpattu District  
Chengalpattu.
3. The Superintendent of Police  
Chengalpattu  
Chengalpattu District.
4. The Superintendent of Prison  
Central Prison - Puzhal  
Chennai District.
5. State rep. by its  
The Inspector of Police

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Madhuranthagam - PEW Police Station  
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 relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 18.03.2023 on the file of the second respondent herein made in proceedings Memo CPT No.23/2023, quash the same as illegal and consequently, direct the respondents herein to produce the petitioner's husband namely, Murali, son of Durai, aged 32 years before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband detained at Central Prison, Puzhal, Chennai.

|                 |   |                                                       |
|-----------------|---|-------------------------------------------------------|
| For Petitioner  | : | Mr.A.J.Magendiraverman<br>representing Mr.R.Sasikumar |
| For Respondents | : | Mr.E.Raj Thilak<br>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 18.04.2023, this Court made the following order:

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MSUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 10.04.2023 over and assailing a detained order dated 18.03.2023 bearing reference CPT.No.23/2023 made by second respondent [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of the detainee is the petitioner.

3. Learned counsel for petitioner submits that ground over qua the detainee was initially registered for an offence under Sections 4(1)(a), 4(1)(b), 4(1)(g), 4(1)(h) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 read with Rules 7 and 11 of Tamil Nadu Rectified Spirit Rules, 2000 [Transporting] and Sections 468, 471 and 420 of 'The Indian Penal Code' (45 of 1860) [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.118 of 2023 on the file of Madhavandagam Prohibition Enforcement Wing.

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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 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed *inter alia* on the ground that the representation made by the wife of the detenu was not considered.

6. *Prima facie* case made out for admission. Admit Habeas Corpus returnable by four weeks.

7. Mr. B. Maniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

[M.S.J.]

18.04.2023

[M.S.K.]



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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.A.J.Magendiraverman, 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. At the time of admission i.e., in the Admission Board, the point that the representation made by the wife of the detenu was not considered 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



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order dated 25.08.2020 in Crl.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. ....In Prohibition Enforcement Wing, Madurantakam Cr.No.1688 of 2020 u/s 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting) against the similar accused Raji, son of 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.....'*

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



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*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 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 18.03.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to



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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.

8. Apropos, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 18.03.2023 bearing reference No.CPT No.23/2023 made by the second respondent is set aside and the detenu Thiru.Murali, male, aged 32 years, son of Durai, 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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To

1. The Secretary to Government  
Home, Prohibition and Excise Department  
Secretariat, Fort St.George  
Chennai-600 009.
2. The District Collector and District Magistrate  
Chengalpattu District  
Chengalpattu.
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High Court, Madras.



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

*mk*

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