



WEB COPY



H.C.P.NO.625 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

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**THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.NO.625 OF 2023

D.Kumari Babitha Lakshmi

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Represented by its Secretary
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
- 2.The District Collector and
District Magistrate
Coimbatore District,
Coimbatore.
- 3.The Superintendent of Police
Coimbatore District,
Coimbatore.
- 4.The Inspector of Police
Periyanaickenpalayam Police Station,
Prohibition and Excise Wing,
Coimbatore District.

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5. The Superintendent of Central Prison
Coimbatore Central Prison
Coimbatore District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to call for the records made in the impugned order in Cr.M.P.No.12/D.O/2023/E1 dated 08.03.2023 on the file of District Collector and District Magistrate, Coimbatore District, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Dhilipkumar Son of Shankar Matho, aged 38 years, before this court now confined at Central Prison, Coimbatore the 5th respondent herein and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

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

ORDER

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

Captioned Habeas Corpus Petition has been filed praying to quash the detention order passed by the second respondent dated 08.03.2023 in Cr.M.P.No.12/D.O/2023/E1.

2. At the time of admission, learned counsel for petitioner predicated his argument on the ground that 'live and proximate link' between



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the grounds of detention and purpose of detention has snapped, now at the time of final hearing today, learned counsel for petitioner drew our attention to a portion of paragraph 5 of the grounds of detention, which reads as follows:

'5...I am aware from the confession statement of Thiru. Dhilipkumar given on 03.02.2023, a case was registered in Coimbatore District, Periyanaickenpalayam Prohibition and Excise Wing in Cr.No.213/2023 under Sections 8(c), 20(b)(ii)(C), 25 NDPS Act, 1985 against Thiru. Dhilipkumar on 03.02.2023. Further Thiru. Dhilipkumar has filed bail petition in Coimbatore District, Periyanaickenpalayam Prohibition and Excise Wing Cr.No.213/2023 under Sections 8(c), 20(b)(ii)(C), 25 of NDPS Act 1985 before the court of Additional District Judge / Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore and the same was dismissed in C.M.P.No.504/2023 dt. 04.03.2023. In the similar case which was registered in Coimbatore District, Thudiyalur Police Station Crime No.681/2021, under



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Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985 bail was granted to Thiru. Safiq @ Mohamedshafiq vide C.M.P.No.683/2021 Dated 19.07.2021 by the Additional District Judge / Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore. Hence, I infer that there is a real possibility of Thiru. Dhilipkumar filing another bail petition before the appropriate court and to be released on bail in the case of Coimbatore District, Periyanaickenpalayam Prohibition and Excise Wing Cr.No.213/2023 under Sections 8(c), 20(b)(ii)(C), 25 NDPS Act 1985 and to release on bail, since in similar cases the appropriate court or higher court grants bail after lapse of certain time...'

3. Learned counsel for petitioner further submitted that the Detaining Authority has not applied his mind while passing the detention order. He drew our attention to the grounds booklet that the ground case has been registered under Sections 8(c), 20(b) (ii) (C) and 25 of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] and the similar case bail order in C.M.P.No.683 of



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2021 dated 19.07.2021 relied on by the Detaining Authority was made arising out of a case registered under Sections 8(c) read with 20(b)(ii)(B) of NDPS Act. Hence, according to the learned counsel for petitioner, the comparison of the ground case with the similar case bail order is erroneous and not good. He further submitted that the similar case bail order relied on by the Detaining Authority is a bail order passed by the learned Additional District Judge / Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore during the period of COVID-19 situation was prevailing. Hence, the comparison of the said bail order with ground case is erroneous. Accordingly, learned counsel prayed to set aside the impugned preventive detention order.

4. Per contra, learned Prosecutor submitted that both the cases are registered under NDPS Act and hence, both are broadly comparable.

5. This Court has considered the submissions made on either side.



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6. The ground case has been registered under Sections 8(c), 20(b) (ii) (C) and 25 of NDPS Act and hence, rigour under Section 37 of NDPS Act would be applicable to the ground case while considering bail but the said rigour would not be applicable to the similar case relied on by the Detaining Authority. Hence, the comparison made by the Detaining Authority is not good. Further, in the similar case, bail was granted during the COVID-19 period. This comparison is incorrect because Covid-19 pandemic situation is from 15.03.2020 to 28.02.2022 as per the orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020. Therefore, subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which granted bail owing to the then prevalent Covid-19 situation is impaired. The said situation is not available to the ground case. Hence, viewing from any angle, the comparison made by the Detaining Authority is not good. It shows the non-application of mind of the Detaining Authority. Hence, we are inclined to interfere with the impugned preventive detention order.



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7. Ergo, the sequitur is captioned HCP is allowed. Impugned

detention order dated 08.03.2023 bearing reference Cr.M.P.No.12/D.O/2023/E1 made by the second respondent is set aside and the detenu Thiru. Dhilipkumar, aged 38 years, son of Thiru. Shankar Matho 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

Neutral Citation : Yes/No

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



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To

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- 1.The Secretary to Government
Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.
- 2.The District Collector and
District Magistrate
Coimbatore District,
Coimbatore.
- 3.The Superintendent of Police
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Periyanaickenpalayam Police Station,
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Coimbatore District.
- 5.The Superintendent of Central Prison
Coimbatore Central Prison
Coimbatore District.
- 6.The Public Prosecutor
Madras High Court,
Madras.



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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

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