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H.C.P.No.606 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.606 of 2023

S.Jayasudha
W/o.A.Sakthivel

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Tambaram City
Office of the Commissioner of Police
Sholinganallur, Chennai-600 119.
3. The Superintendent of Prison
Central Prison, Puzhal,
Chennai-600 066.
4. The Inspector of Police
PEW, Guduvanchery Unit
Chengalpattu District.

..Respondents



H.C.P.No.606 of 2023

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 detention order in Memo No. 12/BCDFGISSSV/2023 dated 24.03.2023 passed by the 2nd respondent under Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's husband A.Sakthivel, S/o.Arunachalam aged about 40 years the detenu, now confined in Central prison, Puzhal, Chennai before this Hon'ble court and set the petitioner's Husband A.Sakthivel S/o.Arunachalam aged about 40 years the detenu herein at liberty.

For Petitioner : Mr.S.Senthilvel
representing Mr.S.Prem Kumar
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 24.04.2023, this Court made the following order:

'H.C.P.No.606 of 2023

M.SUNDAR, J.,
and



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M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 10.04.2023 inter alia assailing a detention order dated 24.03.2023 bearing reference BCDFGISSSV No.12/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, wife of detenu is the petitioner.

3. Mr.S.Prem Kumar, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(a), 4(1-A) of Tamil Nadu Prohibition Act, 1937 (Transporting) and Sections 468 and 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 Guduvanchery Prohibition Enforcement Wing.

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 arrest intimation was not properly sent to the family members of the detenu.

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

7. Mr.E.Raj Thilak, 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 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.S.Senthilvel, learned counsel representing the counsel on record



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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 arrest intimation was not properly sent to the family members of the detenu was urged but in the final hearing Board 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 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:

'4.However in a case registered under similar sections of law in Maduranthakam PS Cr.No.1688 of 2020 u/s 4(1)(aaa), 4(1-A) TNP Act, 6, 11 Tamil Nadu Rectified Spirit Rules 2000 accused Raji, S/o. Murugan was granted bail by the Hon'ble



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Principal District and Sessions Judge at Chengalpattu in Crl.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 lapse of time.....'

5. A careful perusal of Raji's case bail order in the grounds booklet, particularly 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.....'

6. Learned Prosecutor submitted to the contrary by saying that alleged offences in Raji's case and case on hand are broadly comparable.



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WEB COPY 7. We carefully considered the rival submissions.

8. 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 24.03.2023. 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.

9. Apropos, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 24.03.2023 bearing reference

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No.BCDFGISSSV No.12/2023 made by the second respondent is set aside and the detenu Thiru.A.Sakthivel, male, aged 40 years, son of Thiru.Arunachalam, 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.)

16.08.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Tambaram City
Office of the Commissioner of Police
Sholinganallur, Chennai-600 119.
3. The Superintendent of Prison
Central Prison, Puzhal,
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4. The Inspector of Police

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PEW, Guduvanchery Unit
Chengalpattu District.
The Public Prosecutor
High Court, Madras.



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

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