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H.C.P.No.654 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.654 of 2023

S.Lakshmi
W/o.Late Subramanian

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Fort St.George,
Chennai-600 009.
2. The Commissioner of Police
Tambaram City
Tambaram City Police Office
Sholinganallur
Chennai-600 119.
3. The Superintendent
Central Prison
Puzhal, Chennai-600 066.
4. The Inspector of Police
Central Crime Branch
Tambaram City.

..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 and quash the order passed by the second respondent in Memo No.06/BCDFGISSSV/2023 dated 27.02.2023 and consequently direct the respondents herein to produce the body of the detenu viz., S.Namachivayam @ Siva before this Honble Court and petitioner's son now confined in Central Prison, Puzhal, Chennai 600066 and set him at liberty.

For Petitioner : Mr.P.Sam Japa Singh
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, convenience and clarity].

2. When the captioned HCP was listed before this Court 'For Admission' on 21.04.2023, the following proceedings / order was made:

'HCP No.654 of 2023

M.SUNDAR, J.,
AND
SUNDER MOHAN, J.,

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



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H.C.P.No.654 of 2023

Captioned Habeas Corpus Petition has been filed in this Court on 11.04.2023 inter alia assailing a detention order dated 27.02.2023 bearing reference BCDFGISSSV No.06/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 406, 420 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.79 of 2023 on the file of T-1 Tambaram Police Station (CCB, Tambaram City).

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 some of the pages in the grounds booklet furnished to the detenu are illegible 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.



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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.'*

3. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore we are not setting out the same again in this order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 27.02.2023 bearing reference BCDFGISSSV No.06/2023 made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

4. Mr.P.Sam Japa Singh, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. A perusal of paragraph No.5 of Admission Board order will bring to light that at the time of admission, learned counsel for HCP petitioner had posited his challenge to the impugned preventive detention order on the ground that some pages in the grounds booklet are illegible but today, Mr.P.Sam Japa Singh, learned counsel on record for HCP petitioner changed the line of attack and submitted that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is impaired. Most relevant portion of grounds of impugned preventive detention order in this regard is contained in paragraph No.3 of the impugned preventive detention order and the same reads as follows:

'3..... It is pertinent to note that in a case registered at T-13, Chitlapakkam P.S. Cr.No.405/2021 u/s.406, 420 IPC (under similar sections of law) bail was granted to the accused Jalaludeen Khan by the Judicial Magistrate No.I, Tambaram in CrI.M.P.No.1418/2021 dated 30.03.2021. Hence, I infer that there is a very likely of his coming out on bail in T-1, Tambaram PS (CCB / Tambaram) Cr.No.79/2023, since in similar case bail is granted by the Courts after a lapse of time.....'



6. Learned counsel drew our attention to bail order in ***Jalaludeen***

Khan case and submitted that it is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and therefore, subjective satisfaction arrived at by the Detaining Authority is impaired.

7. Learned Prosecutor submitted that offences in ***Jalaludeen Khan*** case and ground case are broadly comparable but we are not inclined to accept the submission as there is little discretion (no discretion) for the learned Sessions Judge when it comes to default bail under Section 167(2) of Cr.PC. To put it differently, bail under Section 167(2) of Cr.PC operates in terms of arithmetics unlike a regular bail under Section 439 of Cr.PC which operates on discretion vested in learned Sessions Judge. We also remind ourselves that the imminent possibility of the detenu being enlarged on bail aspect of a preventive detention order is not qua time but qua probability.

8. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that comparison of ground case and bail order in ***Jalaludeen Khan*** case which is a default bail is clearly flawed



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and therefore, impugned preventive detention order deserves to be dislodged.

9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 27.02.2023 bearing reference BCDFGISSSV No.06/2023 made by the second respondent is set aside and the detenu Thiru.S.Namachivayam @ Siva, male, aged 46 years, son of Thiru.Subramanian, 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.)

12.09.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

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

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To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St.George,
Chennai-600 009.
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5. The Public Prosecutor
High Court, Madras.

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