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H.C.P.No.634 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

Coram

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

H.C.P.No.634 of 2023

Gopi

.. Petitioner

VS

State Rep. By

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Fort St.George, Chennai – 600 009.
- 2.The District Collector and District Magistrate
Ranipet District.
- 3.The Superintendent of Police,
Ranipet District.
- 4.The Superintendent of Police,
Central Prison, Salem.
- 5.The Inspector of Police,
Arakkonam Taluk Circle Police Station,
Ranipet District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in B3/D.O.No.77/2022 dated 19.12.2022 on the file of the District Collector and District Magistrate of Ranipet District, the second respondent herein and quash the same as illegal and direct the respondents to produce the detenu Thiru.Vignesh @ Vicky,



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S/o.Gopi, aged about 25 years, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Ms.S.Sengkodi
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 20.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 11.04.2023 inter alia assailing a detention order dated 19.12.2022 bearing reference B3/D.O.No.77/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Father of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.358 of 2022 on the file of Arakkonam Taluk Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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].



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5. *The detention order has been assailed inter alia on the ground that family members 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.*

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

2. The aforementioned order made in the 20.04.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are four adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.358 of 2022 on the file of Arakkonam Taluk Police Station for the alleged offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. 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.

4. Ms.S.Sengkodi, 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. In the Admission Board, campaign against impugned preventive detention order was predicated on the point that family members of the detenu were not informed about the detention order. To be noted, this is captured in paragraph 5 of the Admission Board order dated 20.04.2023. Be that as it may, in the Final Hearing Board today, Ms.S.Sengkodi, learned counsel on record for petitioner drew the attention of this Court to a portion of paragraph 5 of the grounds of impugned preventive detention order and the same reads as follows:

'5....I am aware that Thiru.Vignesh @ Vicky has not filed any bail application in ground case in Arakkonam Taluk Police Station Cr.No.358/2022 u/s 8(c) r/w 20(b)(ii)(B) Narcotic Drugs and Psychotropic Substances Act, 1985 in any court. However, information from reliable sources reveals that he is intending to file a bail petition through his relatives....'

6. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that the averment of the detaining authority that he has information from reliable sources that the detenu is intending to file a bail petition through his relative is in the abstract. To put it



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differently, learned counsel submitted that this averment of the detaining authority in the grounds of the impugned preventive detention order is not supported by any material. We had the benefit of perusing the grounds booklet. We find that there is no reason to disagree with the submission of learned counsel for petitioner.

7. Learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that such information is given to the detaining authority by the sponsoring authority.

8. We carefully considered the case file and the rival submissions. If the information is from sponsoring authority, then there should at least be a special report from the sponsoring authority, though it would be ideal to have statements from persons concerned. It may not be necessary to go into what would be credible material in cases of this nature as in the case on hand, it is ultimately in the abstract. The sequitur is, the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly flawed and it is baseless. To be noted, imminent possibility of being enlarged on bail is qua probability.

9. Sequitur is, impugned preventive detention order deserves



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to be dislodged.

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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 19.12.2022 bearing reference B3/D.O.No.77/2022 made by the second respondent is set aside and the detenu Thiru.Vignesh @ Vicky, aged 25 years, son of Thiru.Gopi, 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.)
04.07.2023

Index : Yes/No

Neutral Citation : Yes/No

mmi

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

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
Ranipet District.
- 3.The Superintendent of Police,
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6.The Public Prosecutor,
High Court, Madras.



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

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