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H.C.P.No.635 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

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

H.C.P.No.635 of 2023

Velankanni
D/o.Susairaj

.. Petitioner/Friend of Detenue
Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Villupuram District,
Villupuram.
- 3.The Superintendent of Police,
Villupuram District,
Villupuram.
- 4.The Inspector of Police,
Kottakuppam Police Station,
Villupuram District.
- 5.The Superintendent,
Central Prison,
Cuddalore.

... Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records, relating to petitioner's friend detention under Tamil Nadu Act 14 of 1982 vide detention order dated 20.02.2023 on the file of the second respondent herein made in proceedings Rc.No.C2/13039/2023 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's friend, namely Ajithraj alias Raj, aged 21 years S/o.Sivakumar before this Court and set him at liberty, now petitioner's friend detained at Central Prison, Cuddalore.

For Petitioner : Mr.C.C.Chellappan

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].

2. When the captioned HCP was listed in the admission Board on 20.04.2023, the following order was made by this Court.

'Captioned Habeas Corpus Petition has been filed in this Court on 12.04.2023 inter alia assailing a detention order dated



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20.02.2023 bearing reference Rc.No.C2/13039/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Friend of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 342, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.38 of 2023 on the file of Kottakuppam Police Station

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 only in English 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.

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



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3. The aforementioned order / proceedings shall now be read as an integral part and parcel of this order. This means that the short forms, short references and abbreviations used in the earlier order dated 20.04.2023 will continue to be used in the instant order also.

4. There is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.38 of 2023 on the file of Kottakuppam Police Station for the alleged offences under Sections 341, 294(b), 342, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.

5. Mr.C.C.Chellappan, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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6. In the Admission Board, the point that some of the pages in the grounds booklet furnished to the detenu are only in English was projected, however, today in the final hearing Board, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed / impaired. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order and that portion reads as follows:

'For example in a similar case, bail was granted to Thiru.Bharathi alias Daniel, S/o.Senthilkumar in C.M.P.No.493/2021 dated 27.01.2021 by the Villuppuram Principal District and Sessions Court in Kottakuppam Police Station Crime No.8/2021, u/s.147, 341, 294(b), 323, 324, 386, 506(ii), 307 IPC. ...'

7. Adverting to the aforesaid portion of the grounds of impugned preventive detention order, learned counsel drew our attention to the grounds booklet served on the detenue and more particularly to pages 246 and 247 thereat. In pages 246 and 247 of the grounds booklet bail order in



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C.M.P.No.493 of 2021 (Crime No.8/2021 on the file of Kottakuppam Police Station) has been furnished to the detenue. To be noted, this 27.01.2021 bail order is in the case of one Dhaniyal @ Bharathi and therefore this order shall be referred to as **Bharathi's** case. We had the benefit of perusing this **Bharathi's** case bail order. We find that **Bharathi's** case bail order turns largely on then obtaining Covid-19 situation. This is articulated in the bail order of the learned Principal Sessions Judge, Villupuram and the relevant portion of the bail order reads as follows:

'.... considering the Covid-19 virus spread over the world, I am of the view that granting bail to the petitioners would possibly reduce the number of prisoners in the prison, which would be the preventive measure from the spread of the above disease, at the time of Nation Wide Lock down, and hence, I am inclined to allow this petition on the following condition:-'

8. We also noticed that **Bharathi's** case bail order is dated 27.01.2021 and it was at a time when the hearings were only on a video conferencing platform (virtual hearings).

9. In response to the above point, learned Additional Public Prosecutor submitted to the contrary and said that the two cases are largely comparable.



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After perusing **Bharathi's** case bail order we are unable to accept this submission as determinants and parameters applied therein are completely different *inter alia* owing to reason delineated supra. We also find that in **Bharathi's** case, alleged offences are under Sections 147, 341, 294(b), 323, 324, 386, 506(ii) and 307 of IPC, which are quite different from the ground case qua impugned detention order on hand as the same turns on different set of Sections of IPC under different circumstances. Therefore, we have no difficulty in coming to the conclusion that the subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail is impaired. This means that the impugned detention order deserves to be dislodged.

10. Interestingly and intriguingly we find from the grounds of impugned preventive detention order that the detaining authority (second respondent) has not recorded subjective satisfaction qua imminent possibility of detenu being enlarged on bail, though there is a mention about bail order in **Bharathi @ Daniel's** case. We are constrained to write that the second respondent cannot be innocent of the facts that while dealing with personal liberty of citizens it is imperative that there is procedural fairness more so in



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making preventive detention order. That procedural fairness forms a sacrosanct part of the process of making a preventive detention order has been repeatedly reiterated by the Hon'ble Supreme Court in a catena of case laws commencing from ***Sambu Nath Sarkar vs. State of West Bengal*** reported in ***(1973) 1 SCC 856***.

11. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 20.02.2023 bearing reference Rc.No.C2/13039/2023 made by the second respondent is set aside and the detenu Thiru.Ajithraj alias Raj, aged 21 years, son of Thiru.Sivakumar 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.)
31.07.2023

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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



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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Villupuram District,
Villupuram.
- 3.The Superintendent of Police,
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- 6.The Public Prosecutor
Madras High Court, Chennai.



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

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