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H.C.P.No.639 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

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

H.C.P.No.639 of 2023

Pachaiyammal

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai – 9.
- 2.The District Collector and District Magistrate,
Chengalpattu District,
Chengalpattu.
- 3.The Superintendent of Police,
Chengalpattu, Chengalpattu District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai District.
- 5.State Rep. By its
The Inspector of Police,
Madhuranthagam PEW Police Station,
Chengalpattu District.

.. 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 the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 27.03.2023 on the file of the second respondent herein made in proceedings Memo CPT No.24/2023, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Sankar, S/o.Kuppan, aged 42 years, before this Court and set the petitioner's husband at liberty from detention, now petitioner's husband detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.R.Sasikumar
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:



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MSUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 12.04.2023 *inter alia* assailing a detention order dated 27.03.2023 bearing reference CPT No.24/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. Wife of detenu is the petitioner.

3. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(aaa), 4(1)(b), 4(1)(g), 4(1)(h), 4(1-A) of the Tamil Nadu Prohibition Act 1937 read with Rules 7 and 11 of the Tamil Nadu Rectified Spirit Rules 2000 (Transporting) and Sections 468, 471 and 420 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.118 of 2023 on the file of Madhuranthagam Prohibition Enforcement Wing.

4. The aforementioned detention order has been made on the

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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 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.

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


[M.S.J.,]

[M.N.K.J.,]
20.04.2023

mk



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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.R.Sasikumar, learned counsel on record 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 some of the pages in the grounds booklet furnished to the detenu are illegible was urged but in the final hearing 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

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Court of the Principal Sessions Judge of Kancheepuram District at Chengalpattu. Relevant portion in paragraph No.5 of the grounds of detention reads as follows:

'5.In Prohibition Enforcement Wing, Madurantakam Cr.No.1688 of 2020 u/s 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act r/w 6 & 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting) against the similar accused Raji, son of Murugan was released on bail through Principal District and Sessions Court, Chengalpattu in CrI.M.P.No.2698/2020 on 25.08.2020.

Hence, I infer that there is a real possibility of his coming out on bail if he applied bail petition in the above grounds case since in similar cases, bails are granted by the Court after lapse of time....'

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



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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.

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 27.03.2023. 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



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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 27.03.2023 bearing reference CPT No.24/2023 made by the second respondent is set aside and the detenu Thiru.Sankar, aged 42 years, son of Thiru.Kuppan, 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.)
08.08.2023

Index : Yes
Neutral Citation : Yes
mmi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai - 66.

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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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