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H.C.P.No.675 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.675 of 2023

R.Amaravathy
W/o. Ravinderakumar

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai, Vepery
Chennai-600 007.
3. The Inspector of Police
V-4, Rajamangalam Police Station.
4. The Superintendent of Prison
Central Prison, Puzhal, Chennai.

..Respondents

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 in connection with the order of detention

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passed by the second respondent dated 25.03.2023 in Memo.76/BCDFGISSSV/2023 against the petitioner's son Kishore Kumar, S/o. Ravindra Kumar, aged about 28 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue before this Honble Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban
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 brevity, convenience and clarity] was listed in the Admission Board on 25.04.2023, this Court made the following order:

'H.C.P.No.675 of 2023

M.SUNDAR, J.,

and

M.NIRMAL KUMAR, J.,

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

Captioned Habeas Corpus Petition has been filed in this Court on 17.04.2023 inter alia assailing a detention order dated 25.03.2023 bearing reference 76/BCDFGISSSV/2023 made by 'second respondent'



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[hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

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

3. Mr.V.Paarthiban, 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 341, 294(b), 323, 336, 392, 397 and 506 (ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.104 of 2023 on the file of V-4, Rajamangalam 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 similar case bail order and the accident register annexed in the grounds booklet were not properly translated in Tamil, which prevented the detenu from making



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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.'

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. To be noted, 'preventive detention order dated 25.03.2023 bearing reference No.76/BCDFGISSSV/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.

3. Mr.V.Paarthiban, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all



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respondents are before us.

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4. As would be evident from paragraph No.5 of the aforementioned Admission Board order dated 25.04.2023, at the time of admission, learned counsel for petitioner had posited his challenge to the impugned preventive detention order on the ground that some of the documents in the grounds booklet have not been properly translated in Tamil but in the final hearing Board today, learned counsel for petitioner 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 the detenu being enlarged on bail is impaired. Elaborating on this point, learned counsel drew our attention to a portion of paragraph No.4 of the grounds of impugned preventive detention order and the same reads as follows:

'4. Further, in a similar case registered u/s 341, 294(b), 336, 324, 392, 427, 397 & 506(ii) IPC in R-6 Kumaran Nagar Police Station in Cr.No.527/2021, bail was granted to some other accused by the Court of the learned Principal Sessions



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Judge at Chennai in Crl.M.P.No.19198/2021. Hence, I infer that it is very likely of his coming out on bail in V-4 Rajamangalam Police Station Crime No.104/2023, since in a similarly placed cases, bail was granted by the courts, after a lapse of time.....'

5. Adverting to the aforementioned portion of paragraph No.4 of grounds of impugned preventive detention order, learned counsel for petitioner submitted that the bail order referred to therein in 'Crime No.527 of 2021 on the file of R-6 Kumaran Nagar Police Station' [hereinafter 'Ashok's case' for the sake of convenience] has been furnished to the detenu as part of grounds booklet at page Nos.409 to 411. After placing the grounds booklet served on the detenu before this Court and taking us through Ashok's case bail order, more particularly, paragraph No.5 thereat, learned counsel submitted that in Ashok's case there was only one previous case and that was one of the important determinant / parameter qua grant of bail though learned City Public Prosecutor opposed grant of bail. In complete contradistinction, in the case on hand, even according to impugned preventive detention order, there are as many as six adverse cases.

6. Learned Prosecutor submitted to the contrary. Learned Prosecutor



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submitted that alleged offences in Ashok's case and ground case in matter at hand are broadly comparable.

7. We carefully considered the submissions made on both sides. This Court has repeatedly held that in cases where bail orders are compared for arriving at subjective satisfaction by the Detaining Authority i.e., subjective satisfaction regarding imminent possibility of the detenu being enlarged on bail, such imminence is qua probability (not qua time) and therefore what should be compared is not merely alleged offences but determinants and parameters for grant of the discretionary relief of bail. Applying this principle, we find that comparing Ashok's case bail order with the ground case on hand is clearly a case which reminds us of age old adages 'comparing Apples and Oranges' and 'comparing Cheese and Chalk'. This means that the subjective satisfaction arrived at by the Detaining Authority is impaired and such impairment vitiates the impugned preventive detention order leaving it liable for being dislodged in this habeas legal drill.

8. Before concluding, we also remind ourselves that preventive



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detention is not a punishment and HCP is a high prerogative writ.

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9. Apropos, the further sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 25.03.2023 bearing reference No.76/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Kishorekumar, male, aged 28 years, son of Thiru.Ravindra Kumar, 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.)

17.08.2023

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. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai, Vepery
Chennai-600 007.
3. The Inspector of Police
V-4, Rajamangalam Police Station.

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4. The Superintendent of Prison
Central Prison, Puzhal, Chennai.
5. The Public Prosecutor
High Court, Madras.

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

mk

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