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H.C.P.No.678 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.678 of 2023

Suguna

.. Petitioner

Vs

- 1.State of Tamil Nadu
Rep. By The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The District Collector & District Magistrate,
Kanchipuram District, Kanchipuram.
- 3.The Superintendent of Police,
Kancheepuram District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal.
- 5.The Inspector of Police,
All Women Police Station,
Sriperumbudur,
Kancheepuram 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
of the detention order vide No. RC.No.41/2023/M6/D.O.No.09/2023

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dated 29.03.2023 on the file of the second respondent and quash the same and produce the petitioner's son Nagaraj @ Naga, S/o. Panchatcharam, aged 32 years, confined at Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel,
assisted by Ms.M.Kokila
for Mr.V.Thirumalai

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 captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of brevity, convenience and clarity).

2. When the captioned HCP was listed for admission on 25.04.2023 the following order was made:

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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 19.04.2023 inter alia assailing a detention order dated 29.03.2023 bearing reference Rc No.41/2023/MS-D.O.No.09/2023



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

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

3. Mr.V.Thirumalai, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offence under Sections 363, 376(D) and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.06 of 2022 on the file of All Woman Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual offender' under Section 2(ggg) 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 referred to by the detaining authority is not similar in nature, which reflects non-application of mind.

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.'

3. The aforesaid Admission Board order dated 25.04.2023 captures all the essentials i.e., essentials that are imperative for appreciating this final order and therefore we are not setting out the facts again in this final order. Suffice to say that the aforementioned Admission Board order dated 25.04.2023 shall be read as an integral



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part and parcel of this final order. This also means that the short forms, short references and abbreviations used in the Admission Board order dated 25.04.2023 will continue to be used in the instant final order also.

4. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, Mr.V.Thirumalai, learned counsel for petitioner posited his challenge to impugned preventive detention order on the ground that similar case that has been relied on by the Detaining Authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is really not similar. Today, in the Final Hearing Board, Mr.S.Senthilvel assisted by Ms.M.Kokila, learned counsel representing the counsel on record for petitioner, elaborating on this Admission Board order drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

'5..... In Anaicut Police Station Crime No.327/2017 u/s 363, 294(b), 506(ii), 307, 376(D) IPC r/w 4 of Tamil Nadu Prevention of Women Harassment Act, 2002 the accused Thiru.Dakshinamurthy @ Murthy, S/o.Thulukanam was released on bail through Principal District Sessions Court, Kancheepuram District @ Chengalpattu in Crl.M.P.No.4430/2017 dated 18.12.2017; Hence, I infer that there is real possibility of coming out on bail in above case since in similar cases bails are



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granted by the courts after lapse of time...'

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5. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel for petitioner submitted that *Dhakshinamoorthy's case* i.e., bail order in *Dhakshinamoorthy's case* dated 18.12.2017 in CrI.M.P.No.4430 of 2017 on the file of Principal Sessions Judge, Kancheepuram at Chengalpattu is at page No.83 of the grounds booklet. To be noted, we had the benefit of perusing the grounds booklet. Adverting to *Dhakshinamoorthy's case* bail order, learned counsel submitted that *Dhakshinamoorthy's case* is one where the parties had compromised the matter amongst themselves and the de facto complainant herself had appeared before the Court and filed an affidavit saying that the complaint is false. Though the earlier bail petition was dismissed in the teeth of this version, in the 18.12.2017 order alluded to in the grounds of impugned preventive detention order, learned Sessions Judge had taken this compromise between the parties as a determinant/parameter for grant of discretionary relief of bail and therefore *comparison of Dhakshinamoorthy's case with the ground case for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is flawed, is learned counsel's say.*

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6. In response to the aforementioned submission of learned counsel for petitioner, learned Prosecutor submitted that the offences in *Dhakshinamoorthy's case* and ground case are broadly comparable.

7. We carefully considered the rival submissions. This Court has repeatedly held that it is not a mere comparison of the alleged offences in the ground case and the similar case and it is also a comparison of determinants/parameters that are imperative qua grant of bail which is a discretionary order. In this view of the matter, we have no difficulty in sustaining the submission of learned counsel for petitioner. This means that the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed. In this regard, we also remind ourselves that imminent possibility is not qua time but it is qua probability. Therefore, the determinant/parameter which weighed in the mind of the learned sessions Judge for grant of bail assumes significance and to be noted, in this case, it is compromise and an affidavit filed by the defacto complainant by appearing in person before the Sessions Court.



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8. The sum sequitur of narrative and dispositive reasoning thus far is, impugned preventive detention order is vitiated and becomes liable for being dislodged in this habeas legal drill.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.03.2023 bearing reference Rc.No.41/2023/M6-D.O.No.09/2023 made by the second respondent is set aside and the detenu Thiru.Nagaraj @ Naga, aged 32 years, Son of Thiru.Panchatcharam, 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
Neutral Citation : Yes
mmi

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

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.

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2.The District Collector & District Magistrate,
Kanchipuram District, Kanchipuram.

3.The Superintendent of Police,
Kancheepuram District.

4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

5.The Inspector of Police,
All Women Police Station,
Sriperumbudur,
Kancheepuram District.

6.The Public Prosecutor,
High Court, Madras.



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

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