



H.C.P.No.685 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.685 of 2023

Poojeswari

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector & District Magistrate,
Vellore District, Vellore – 9.
- 3.The Superintendent of Police,
Vellore District, Vellore – 9.
- 4.The Superintendent of Prison,
Central Prison, Vellore – 2.
- 5.The Inspector of Police,
Pernambut Police Station,
Vellore 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 connection with the order of detention passed by the second respondent dated 17.04.2023 in C3/D.O.No.28/2023 against the petitioner's husband Yupesh, male, aged 25 years, S/o.Krishnamoorthi,

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who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.SAKTHIVEL, J.,**]

Petitioner is the wife of the detenu. Captioned Habeas Corpus Petition (hereinafter HCP for the sake of brevity, convenience and clarity) is filed to set aside the detention order dated 17.04.2023 passed by the second respondent vide proceedings in C3/D.O.No.28/2023.

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

'H.C.P.No.685 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 20.04.2023 inter alia assailing a detention



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order dated 17.04.2023 bearing reference C3/D.O.No.28/2023 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 279 and 337 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with 4(1)(aaa) of the Tamil Nadu Prohibition Act, 1937 [hereinafter 'TNP Act' for the sake of convenience and brevity] subsequently, altered into Sections 279, 337 of IPC read with 4(1)(aaa), 4(1-A) of TNP Act in Crime No.114 of 2023 on the file of Pernambut Police Station.

4. The aforementioned detention order has been made on the 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 live and proximate link between the grounds of detention and purpose of detention has snapped as the date of arrest in the ground case is 16.03.2023 but the impugned detention order has been made only 17.04.2023.

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. Heard Mr.D.Balaji, learned counsel for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for respondents.

4. At the time of admission, learned counsel for the petitioner has predicated his campaign against the impugned preventive detention order on the point that live and proximate link between the grounds of detention and purpose of detention has snapped but today in the Final Hearing Board, learned counsel for the petitioner has submitted that the detaining authority before passing the impugned preventive detention order has not applied his mind. He drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

'5....In a similar case registered at Vellore Prohibition Enforcement wing Cr.No.187/2021, U/s.4(1)(i), 4(1)(aaa), 4(1-A)(ii) Tamil Nadu Prohibition Act r/w 328 IPC, bail was granted by the Principal Sessions Court, Vellore in Crl.M.P.No.1206/2021 to one Thiru.Sundar on 20.04.2021. As bails are being granted by courts in such cases, there is real possibility that he (Thiru.Yupesh) would be coming out of bail, by above pending bail application in the court...'



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5. Adverting to the aforesaid similar case bail order furnished to the detenu in the grounds booklet, the learned counsel submitted that the similar case bail order was passed considering the Covid-19 pandemic situation. In short, he submitted that Courts have liberally granted bail considering the Covid-19 situation and in view of the Hon'ble Supreme Court orders. Hence the subjective satisfaction arrived at by the detaining authority that imminent possibility of the detenu being released on bail is non-application of mind and erroneous approach. Accordingly, the learned counsel prayed to allow the HCP.

6. Per contra, learned Additional Public Prosecutor has submitted that the offences in the similar case and ground case are broadly comparable. The detaining authority after perusing all the records submitted by the sponsoring authority has rightly come to the conclusion and passed the impugned preventive detention order which is sustainable in law.

7. We have perused the grounds booklet furnished to the detenu. Similar case bail order i.e., CrI.M.P. No.1206 of 2021 on the file of



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Principal Sessions Judge, Vellore relied on by the detaining authority has been annexed in page No.66 of the grounds booklet. The said bail order was passed on 20.04.2021 during Covid-19 period. It is to be noted Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020 dated 10.01.2022 exempted the period between 15.03.2020 and 28.02.2022 considering the then prevailing Covid-19 situation. In view of the Apex Court order, bail orders were passed liberally during the said period. Hence comparison of the said bail order with the ground case is erroneous and non-application of mind. Since the detaining authority has passed the order without applying his mind, the order is vitiated. It is to be noted that preventive detention order is not a punishment and no trial is provided. Hence the detaining authority before passing the detention order should have applied his mind. In view of the above reasoning, we are inclined to allow the captioned HCP.

8. Resultantly, this captioned HCP is allowed. Impugned preventive detention order dated 17.04.2023 bearing reference C3/D.O.No.28/2023 made by the second respondent is set aside and the detenu Thiru.Yupesh, aged 25 years, Son of Thiru.Krishnamoorthi,



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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/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Vellore.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector & District Magistrate,
Vellore District, Vellore – 9.
- 3.The Superintendent of Police,
Vellore District, Vellore – 9.
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Central Prison, Vellore – 2.
- 5.The Inspector of Police,
Pernambut Police Station,
Vellore District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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