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H.C.P.No.684 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.684 of 2023

Thilagavathi

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The District Collector and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore – 2.
- 5.The Inspector of Police
Polur PEW Police Station,
Tiruvannamalai 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

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respondent dated 17.04.2023 in D.O.No.41/2023-C2 against the petitioner's husband Anandan, Male, aged 47 years, S/o.Pakkiri Kumar, 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 **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 26.04.2023, the following order was made:

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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 order dated 17.04.2023 bearing reference D.O.No.41/2023-C2 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.



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3. *Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 4(1)(aaa) read with 4(1-A)(ii) of the Tamil Nadu Prohibition Act, 1937 and Rules 6, 7 of RS Rules 2000 in Crime No.208 of 2023 on the file of Polur Prohibition Enforcement Wing.*

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 21.02.2023 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.'*

2. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this final order also for the sake of convenience and clarity. To be noted, 'detention order dated 17.04.2023 bearing



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reference D.O.No.41/2023-C2' made by the 'detaining authority' shall hereinafter be referred to as 'impugned preventive detention order' in this final order for the sake of brevity, convenience and clarity.

3. Mr.D.Balaji, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

4. As would be evident from paragraph 5 of the 17.04.2023 Admission Board order, at the time of admission, learned counsel for petitioner posited his challenge against the impugned preventive detention order on the ground that 'live and proximate link' between the grounds of detention and purpose of detention has snapped, but in the Final Hearing Board today, learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on the ground that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being released on bail is impaired.



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5. Elaborating on the aforementioned point on subjective satisfaction, learned counsel for petitioner drew our attention to a portion of paragraph 5 of the impugned preventive detention order which reads as follows:

'5.....I am also aware that in a similar case registered in Tiruvannamalai Prohibition Enforcement Wing, Cr.No.376/2015 under section 4(1)(i) r/w 4(1-A)(ii) TNP Act, 1937 @ 4(1)(i), 4(1)(aaa) r/w 4(1-A)(ii) TNP Act, 1937 against Tmt.Bharathi W/o.Elumalai, was granted bail by the orders of the District Sessions Court, Tiruvannamalai in CrI.M.P.No.2206/2015 dated 03.07.2015. Hence I infer that there is a real possibility of her (Thiru.Anandan) coming out on bail by filing bail application before appropriate court in the ground case, since bails are granted by the courts in the ground case....'

6. We had the benefit of perusing the aforementioned bail order [we shall refer to the same as '*Bharathi's case*' as Bharathi is the petitioner therein]. Relevant paragraph in *Bharathi's case* bail order reads as follows:



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'On behalf of the prosecution, it was submitted that the investigation in this case is almost over and the prosecution is not having any objection.'

7. Adverting to the aforementioned portion of *Bharathi's case* bail order, learned counsel for petitioner submits that a uncontested bail order i.e., where the prosecution has not objected to bail order is virtually in the nature of a consent and therefore, the same cannot be used as a benchmark to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail particularly as imminent possibility is qua probability. To put it differently, it is a comparison which reminds one of the age old adage 'comparing apples and oranges'. Therefore, we have no hesitation in accepting the submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority is impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.04.2023 bearing reference D.O.No.41/2023-C2 made by the second respondent is set aside and the detenu Thiru.Anandan, aged 47 years, Son of Thiru.Pakkiri Kumar,



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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
Neutral Citation : Yes
mmi

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 and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore – 2.
- 5.The Inspector of Police
Polur PEW Police Station,
Tiruvannamalai District.
- 6.The Public Prosecutor,
High Court, Madras.

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and
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