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H.C.P.No.1536 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1536 of 2023

Ruby
W/o.M.Sankaranarayanan

.. Petitioner

Vs

1. Government of Tamil Nadu
Represented by
Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. Commissioner of Police
Detaining Authority
Coimbatore City.
3. The Superintendent
Central Prison, Coimbatore.
4. Inspector of Police
Ramanathapuram Police Station
Coimbatore City.

... Respondents



H.C.P.No.1536 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the proceedings of detention order C.No.86/G/IS/2022 dated 27.12.2022 passed by the 2nd respondent herein and set aside the same and direct the respondents 1 to 4 to produce the petitioner's brother Mr.Jeganath Singh @ Jeganathan, son of Guna Singh Thangaraj, aged about 41 years, now confined in the Central Prison, Coimbatore before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.S.Senthilvel
representing Mr.P.Narayan Prasadh
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.Aravind .C

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

This order will now dispose of the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed before this Court in Admission Board on 14.08.2023, the following proceedings / order was made:

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M.SUNDAR, J.
and



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H.C.P.No.1536 of 2023

R.SAKTHIVEL, 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 27.12.2022 bearing reference C.No.86/G/IS/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience]. To be noted, fourth respondent is the Sponsoring Authority.

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

3. Mr.P.Narayana Prasadh, learned counsel on record for petitioner is before this Court. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 120-B, 468, 471, 420 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.525 of 2022 on the file of D-1 Ramanathapuram Police Station, Coimbatore City.

4. The aforementioned impugned preventive 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].



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5. *The impugned preventive detention order has been assailed inter alia on the ground that there is a delay of 29 days in passing the impugned preventive detention order as the detenu was arrested on 28.11.2022 but the impugned preventive detention order was passed on 27.12.2022.*

6. *Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.*

7. *Mr.E.Raj Thilak, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'*

3. 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 in this final order. Suffice to say that aforementioned Admission Board order shall now be read as an integral part and parcel of this final order. Be that as it may, we shall continue to use the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity.

4. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public



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Prosecutor for all respondents are before us.

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5. As would be evident from paragraph No.5 of the Admission Board order, at the time of admission, learned counsel for petitioner posited his challenge to impugned preventive detention order on the point that there was delay in making impugned preventive detention order but today, Mr.S.Senthilvel, learned counsel for petitioner changed his line of attack and submitted that subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is flawed. Elaborating on his submission in this direction, learned counsel drew our attention to a portion of sub-paragraph (i) of paragraph No.9 of the impugned preventive detention order which reads as follows:

'9.....

i) *Further in the said adverse case, his co-accused Shobanadevi @ Priya was granted bail by the Court of Hon'ble Judicial Magistrate No.VI, Coimbatore in C.M.P.No.41672/2022 on 30.11.2022. Copies of the above order are enclosed in the booklet containing the related documents / records.....'*



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6. Learned counsel submitted that bail order in adverse case being bail order dated 30.11.2022 has been furnished to the detenu as part of grounds booklet and it is at page Nos.353 to 356. Adverting to this adverse case bail order, learned counsel submitted that, that was the case where the prosecution had not chosen to oppose the grant of bail though sufficient time was granted.

7. In response to the aforementioned argument, learned Prosecutor submitted that the offences in the ground case and adverse case are broadly comparable.

8. We carefully considered the rival submissions.

9. As regards subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail, it is not a mere comparison of offences but it is also a comparison of parameters and determinants which weighed in the minds of bail Court in granting discretionary relief of bail. On perusing the adverse case bail



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order, more particularly, paragraph No.5 thereat, it is clear that the prosecution has not chosen to oppose grant of bail in spite of being given sufficient opportunities. Therefore, a bail granted where prosecution is not opposing the bail plea cannot be taken as Bench mark for arriving at subjective satisfaction qua imminent possibility of the detenu being enlarged on bail. This by itself makes subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is flawed inference leaving the impugned preventive detention order vulnerable and vitiated for being dislodged in this habeas legal drill.

10. In this view of the matter, we dislodge the impugned preventive detention order in this habeas legal drill.

11. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 27.12.2022 bearing reference C.No.86/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.Jeganath Singh @ Jeganathan, male, aged 41 years, son of Thiru.Gunas Singh



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Thangaraj, 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.)

27.09.2023

Index : Yes/No
Speaking / Non-speaking order
Neutral Citation : Yes/No

mk

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

To

1. Government of Tamil Nadu
Represented by
Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.
2. Commissioner of Police
Detaining Authority
Coimbatore City.
3. The Superintendent
Central Prison, Coimbatore.
4. Inspector of Police
Ramanathapuram Police Station
Coimbatore City.
5. The Public Prosecutor
Madras High Court, Chennai.



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