



H.C.P.No.734 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.734 of 2023

R.Nathiya

.. Petitioner

Vs

1. The Secretary to the Government,
Government of Tamil Nadu,
(Home), Prohibition and Excise Department,
Secretariat, Fort St. George
Chennai – 600 009
2. The District Collector and
District Magistrate
Chengalpattu District
Chengalpattu
3. The Superintendent of Police
Chengalpattu District
Chengalpattu
4. The Inspector of Police
Prohibition Enforcement Wing
Mamallapuram
Chengalpattu District
5. The Superintendent of Prison

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Central Prison
Puzhal, Chennai

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records connected with the order of the 2nd respondent herein in CPT No.28/2023 dated 10.04.2023 passed against the petitioner's husband the detenu namely Ramachandran, son of Krishnan, aged about 39 years as a “Bootlegger” who is confined at Central Prison, Puzhal, Chennai – 600 066 and set aside the same and consequently direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Murugavel

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of the detenu assailing a 'preventive detention order dated 10.04.2023 bearing reference CPT No.28/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by



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second respondent (hereinafter 'detaining authority' for the sake of convenience). To be noted, fourth respondent is the sponsoring authority.

2. Impugned preventive detention order has been made under '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] on the premise that the detenu is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.221 of 2023 on the file of Mamallapuram Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa) and 4(1-A) of 'Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP Act' for the sake of brevity] read with Rules 6 and 11 of 'Tamil Nadu Rectified Spirit Rules, 2000 (Transporting)' [hereinafter 'said Rules' for the sake of brevity].



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Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.A.Murugavel, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on *Raji's* case bail order being bail order dated 25.08.2020 in CrI.M.P.No.2698 of 2020 on the file of Principal Sessions Judge of Kancheepuram District at Chengalpattu. Relevant portion in paragraph No.5 of the grounds of detention reads as follows:

"5.....In Prohibition Enforcement Wing, Madurantakam



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Cr.No.1688/2020 u/s. 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act read with 6 and 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting) against the similar accused Raji, S/o.Murugan was released on bail through Principal District and Sessions Court, Chengalpattu in Crl.M.P.No.2698/2020 on 25.08.2020.

Hence I infer that there is a real possibility of his coming out on bail if he applied bail petition in the above ground case since in similar cases bails are granted by the court after lapse of time.....'

6. A careful perusal of *Raji's case* bail order, brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail. Relevant portion in *Raji's case* bail order reads as follows:

'There is no hospitalization due to consumption of poisonous arrack. The petitioner is in judicial custody for the past 14 days. In furtherance to the directions of the Hon'ble Chief Justice of High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in suo motu W.P (Civil) No.1/2020 in re:Contagious of COVID-19 virus in prisons and also in view



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of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible.'

7. Learned Prosecutor submitted to the contrary by saying that alleged offences in *Raji's case* and case on hand are broadly comparable.

8. We carefully considered the rival submissions.

9. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, *Raji's case* would not apply to the case on hand as the impugned preventive detention order has been made on 10.04.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' is qua probability. Therefore subjective satisfaction as regards imminent possibility of detenu being enlarged on bail



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arrived at by Detaining Authority relying on a bail order where in bail has been granted owing to then prevalent Covid-19 situation, has impaired the subjective satisfaction leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 10.04.2023 bearing reference CPT No.28/2023 made by the second respondent is set aside and the detenu Thiru.Ramachandran, aged 39 years, Son of Thiru.Krishnan, 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.)

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Index : Yes

Neutral Citation : Yes

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

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To

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6. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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