



H.C.P.No.739 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.739 of 2023

Jaya

.. 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,
O/o. The District Collector and District Magistrate,
Kanchipuram District, Kanchipuram.
- 3.The Superintendent of Police,
Kancheepuram District.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai - 66.
- 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

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of the detention order vide No. RC.No.40/2023/M6/D.O.No.10/2023 dated 29.03.2023 on the file of the second respondent and quash the same and produce the petitioner's husband's brother's son Prakash, S/o. Selvam, aged 31 years, confined at Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.S.N.Arunkumar
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 aunt of detenu assailing a 'preventive detention order dated 29.03.2023 bearing reference Rc.No.40/2023/M6-D.O.No.10/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by 'second respondent' (hereinafter 'detaining authority' for the sake of convenience). To be noted, fifth respondent is the sponsoring authority.

2. Impugned preventive detention order has been made under



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'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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There is no adverse case. The ground case which is the sole substratum of the impugned preventive detention order is Crime No.06 of 2022 on the file of All Women Police Station, Sriperumpudur for alleged offences under Sections 363, 376(D), 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.S.N.Arunkumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.



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5. Mr.S.N.Arunkumar, learned counsel on record for petitioner drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

'5..... In Anaicut PS Cr. 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.Dakshinamoorthy @ Moorthy, S/o.Thulukanam was released on bail through Principal District Sessions Court, Kancheepuram District @ Chengalpattu in CrI.M.P.No.4430/2017 on 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 granted by the courts after lapse of time...'

6. 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.223 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



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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.*

7. 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.

8. 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



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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.

9. 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.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.03.2023 bearing reference Rc.No.40/2023/M6-D.O.No.10/2023 made by the second respondent is set aside and the detenu Thiru.Prakash, aged 31 years, Son of Thiru.Selvam, is directed to be set at liberty forthwith, if not required



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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
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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.
- 2.The District Collector & District Magistrate,
O/o. The District Collector and District Magistrate,
Kanchipuram District, Kanchipuram.
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Kancheepuram District.
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- 6.The Public Prosecutor,
High Court, Madras.



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

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