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H.C.P.No.713 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

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

H.C.P.No.713 of 2023

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.. Petitioner

Vs

- 1.State of Tamil Nadu
Rep. By The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai – 77.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai.

.. 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 relating to the detention order vide Memo BCDFGISSSV No.82/2023 dated 29.03.2023 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's son

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namely Imran Farith @ Mandai Imran, S/o.Yusuf, aged 27 years (who is presently undergoing detention in Central Prison, Puzhal, Chennai) before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for 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 mother of the detenu assailing a 'preventive detention order dated 29.03.2023 bearing reference BCDFGISSSV No.82/2023' [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, 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-



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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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are five adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.67 of 2023 on the file of S-8 Adambakkam Police Station for alleged offences under Sections 341, 294(b), 336, 427, 397 and 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.Senthilvel, learned counsel representing the 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. In the support affidavit qua captioned HCP, very many points have been urged/raised but in the Final Hearing Board today, Mr.S.Senthilvel, learned counsel appearing on behalf of Mr.S.N.Arun Kumar, learned counsel on record for the HCP petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed/impaired. Elaborating on this point, learned counsel for petitioner drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order, which reads as follows:

'4....Further, it is pertinent to note that in a case registered at J-6 Thiruvannamiyur Police Station in Crime No.81/2023, u/s.294(b), 341, 324, 307 & 506(ii) IPC, bail was granted to the accused Thiru Vinoth by the Court of Hon'ble Principal Sessions Judge at Chennai, in Crl.M.P.No.5571/2023. Further, it is pertinent to note that in a case registered at J-7 Velachery PS in Cr.No.12/2023 u/s. 323, 427, 397, 336, 506(ii) IPC, the bail was granted to the accused Thiru.Chithiraiselvan by the Court of learned Sessions, Chennai, in Crl.M.P.No.2054/2023. Hence, I infer that it is very likely of his coming out on bail in S-8 Adambakkam Police Station Crime Nos.66/2023 and



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67/2023 and there is a real possibility of his coming out on bail in S-7 Madipakkam Police Station Cr.No.83/2023 by filing bail application before the appropriate court, since in similarly placed cases, bail was granted by the courts after a lapse of time.....'

6. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that the detaining authority has relied on two bail orders to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail and those two cases are *Vinoth's* case and *Chithiraiselvan's* case.

7. Learned counsel submitted that *Vinoth's* case turns heavily on Section 307 IPC which is attempt to murder whereas the case on hand turns more on Section 397 IPC which pertains to robbery or dacoity with attempt to cause death or grievous hurt. As regards *Chithiraiselvan's* case, it was submitted that though Section 397 IPC is one of the alleged offences in *Chithiraiselvan's* case, paragraph 5 of the bail order of *Chithiraiselvan's* case will bring to light that Chithiraiselvan had only one previous case whereas in the case on hand, even according to the detaining authority, there are as many as



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five adverse cases, therefore the comparison is bad, is learned counsel's say.

8. In response to the aforementioned argument projected by the learned counsel for petitioner, learned Prosecutor submitted that the offences are broadly comparable atleast in *Chithiraiselvan's* case and therefore the comparison is fair.

9. As regards *Vinoth's* case, we find that the offences are different and the offences are such that one is a different kettle of fish qua the other. As regards *Chithiraiselvan's* case, we find that determinants/parameters for grant of bail are vastly different as in *Chithiraiselvan's* case, there was only one previous case as opposed to five adverse cases in the case on hand as even according to the detaining authority (according to the detaining authority as articulated in the grounds of impugned preventive detention order). To be noted, this Court has repeatedly held that as regards subjective satisfaction qua imminent possibility of detenu being enlarged on bail is not a comparison merely of the alleged offences but it is a comparison of determinants/parameters qua grant of discretionary



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relief of bail also. This means that on the facts and circumstances of the case, comparison of *Vinoth's* case and *Chithiraiselvan's* case with ground case by the detaining authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is flawed. The comparison is not just with the ground case but it is with adverse case No.5 also (Crime Nos.66 of 2023 and 67 of 2023) which is not very different qua the ground case. This Court has repeatedly held that when subjective satisfaction in this regard i.e., with regard to imminent possibility of detenu being enlarged on bail is flawed, the same vitiates the impugned preventive detention order and leaves it vulnerable for being dislodged in a habeas drill.

10. In this regard, we also remind ourselves that preventive detention is not a punishment and Habeas Corpus Petition is a high prerogative writ.

11. In the light of the narrative, discussion and dispositive reasoning thus far, we have no difficulty in saying that the impugned preventive detention order is vitiated owing to impaired subjective satisfaction arrived at by the detaining authority qua imminent



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possibility of detenu being enlarged on bail and therefore is liable to be set aside in the habeas legal drill on hand.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.03.2023 bearing reference BCDFGISSSV/No.82/2023 made by the second respondent is set aside and the detenu Thiru.Imran Farith @ Mandai Imran, aged 27 years, Son of Thiru.Yusuf, 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, Puzhal, Chennai.

To

- 1.The Secretary,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goondas Section)
Vepery, Chennai – 77.

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3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Inspector of Police,
S-8, Adambakkam Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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