



H.C.P.No.712 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.712 of 2023

Prema

.. 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,
S1 St.Thomas Mount 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.84/2023 dated 29.03.2023 passed by the second respondent and quash the same and direct the respondents herein to produce the petitioner's

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brother namely Ajithkumar @ Pichandi, S/o.Devan, aged 25 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 sister of the detenu assailing a 'preventive detention order dated 29.03.2023 bearing reference BCDFGISSSV No.84/2023' [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 is one adverse case. The ground case which constitutes a substantial part of substratum of the impugned preventive detention order is Crime No.28 of 2023 on the file of S-1 St. Thomas Mount Police Station for alleged offences under Sections 147, 341, 294(b), 323, 324, 506(ii), 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into one under Sections 147, 341, 294(b), 323, 324, 506(ii) and 302 IPC. 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. 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 *Balaji's case* bail order being bail order dated 26.05.2021 in CrI.M.P.No.10485 of 2021 on the file of Sessions Court, Chennai. Relevant portion in paragraph No.4 of the grounds of impugned preventive detention order reads as follows:

'4.....Further, in a similar case, registered at R-3 Ashok Nagar P.S. Cr.No.59/2021 u/s 147, 148, 449, 324 and 302 IPC, the bail was granted to the accused Thiru Balaji by the Court of learned Principal Sessions, Chennai in CrI.M.P.No.10485/2021. Hence, I infer that it is very likely of his coming out on bail in S-1 St. Thomas Mount Police Station Cr. No.28/2023 case, since in similarly placed case, bail was granted by the courts after a lapse of time.....'

6. A careful perusal of *Balaji's case* bail order, more particularly paragraph 5 thereof brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail. Paragraph 5 of *Balaji's case* bail order reads as follows:



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'5.The petitioners have been in custody for the past 75 days. No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

7. Learned Prosecutor submitted to the contrary by saying that alleged offences in *Balaji'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, *Balaji's case* would not apply to the case on hand as the impugned preventive detention order has been made on 29.03.2023. 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



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possibility' is qua probability. Therefore, subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by the detaining authority by relying on a bail order wherein 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 29.03.2023 bearing reference BCDFGISSSV No.84/2023 made by the second respondent is set aside and the detenu Thiru.Ajithkumar @ Pichandi, aged 25 years, Son of Thiru.Devan, 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
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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

- 1.The Secretary to Government,
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- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police (Goonds Section)
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- 5.The Public Prosecutor,
High Court, Madras.



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

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