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H.C.P.No.727 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.727 of 2023

Ponvanan

.. Petitioner

VS

1.State of Tamil Nadu

Rep.by the Additional Secretary, Home
Prohibition and Excise Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Police

Avadi City
Type V, QTR No.5/1, HVF Estate
Avadi, Chennai – 600 054

3. The Inspector of Police

M-4, Redhills Police Station

4. The Superintendent of Prison

Central Prison-II, Puzhal, Chennai – 600 066 .. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus calling for the records relating to
the detention order in Memo No.90/BCDFGISSSV/2023 dated



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04.04.2023 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's brother Thiru.Malarvanan, son of Kalaivanan, aged about 24 years, the detenu now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.R.Lingakumar

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 brother of the detenu assailing a 'preventive detention order dated 04.04.2023 bearing reference 90/BCDFGISSSV/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, third 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



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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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. There is no adverse case. The solitary case which is the sole substratum of the impugned preventive detention order is Crime No.75 of 2023 on the file of M4-Redhills Police Station for alleged offences under Section 8(c) read with Section 20(b)(ii(C) and Section 29(1) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' 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.R.Lingakumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Though very many grounds have been raised in the support affidavit qua captioned HCP, learned counsel on record for the petitioner posited his campaign against the impugned preventive detention order on



the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. In support of this submission and in elaboration of this submission, learned counsel drew our attention to two portions of the grounds of impugned preventive detention order (a portion of paragraph 2 and another portion of paragraph 3) and the same read as follows:

'(2).....Later, at 1300 hrs., Sub Inspector of Police along with the seized properties and arrested accused returned to M4 Redhills Police Station and lodged a special report in this regard. Thiru.M.C.Ramesh, Inspector of Police, Law and Order, M4 Redhills Police Station, who received the above special report had registered a case in M4 \Redhills Police Station Cr.No.75/2023 u/s.8(c) r/w 20(b)(ii)(C), 29(1) of NDPS Act 1985 took up for investigation'

'(4).... In a similar case registered in registered in D1 Triplicane Police Station Cr.No.932/2020 u/s. 8(c) r/w 20(b)(ii)(B), 29(1) of NDPS Act 1985 bail was granted by the Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.1842/2020. Hence I infer that there is real possibility of his coming out on bail in M-4 Red Hills Police Station Cr.No.75/2023 by filing bail application before the appropriate court, since in similar case bail is granted by the courts after a lapse of time.....'

6. Learned counsel submitted that the aforementioned portions show that subjective satisfaction of the detaining authority has been arrived at by comparing bail order in *Rakesh's* case {intermediate quantity under Section 20(b)(ii)(B) of NDPS Act} with the ground case



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which is one for alleged commercial quantity under Section 20(b)(ii)(C) of NDPS Act. To be noted, the Narcotic Drugs and Psychotropic Substances Act, 1985 is referred to as 'NDPS Act' for the sake of brevity and convenience.

7. In response to the aforementioned argument, learned Prosecutor submitted that the ground case as well as *Rakesh's* case bail order are qua same substance under NDPS Act and are therefore comparable.

8. We carefully considered the rival submissions and we find that the aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is impaired because the parameters and determinants for grant of discretionary relief of bail should also be taken into account while comparing a case with another case to arrive at subjective satisfaction regarding imminent possibility of detenu being enlarged on bail. In the light of Section 37 of NDPS Act, which is in the nature of a statutory bar qua bail in commercial quantity cases, we have no difficulty in saying that the statute itself recognises a distinction between 'in between quantity/intermediate quantity' under Section 20(b)(ii)(B) of NDPS Act and 'commercial quantity' under Section



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20(b)(ii)(C) of NDPS Act when it comes to grant of bail and therefore comparison of one with the other to arrive at aforementioned subjective satisfaction is clearly a flawed exercise which reminds us of age old adages 'comparing apples and oranges' and 'comparing cheese and chalk'.

9. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 04.04.2023 bearing reference No.90/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Malarvanan, aged 24 years, son of Thiru.Kalaivanan, 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.)
08.09.2023

Index : Yes

Neutral Citation : Yes

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



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To

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High Court, Madras.



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

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