



H.C.P.No.938 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.938 of 2023

Muthammal

.. Petitioner/Detenu's mother

Vs

State of Tamilnadu rep. By its

1. The Additional Chief Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, St.George Fort
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai, Office of the Commissioner of Police
(Drug Offenders Section), Vepery, Chennai – 600 007
3. The Superintendent of Police
Central Prison, Puzhal
Chennai – 600 066
4. The Inspector of Police
Prohibition Enforcement Wing
Washermenpet, Chennai

... Respondents

Page Nos.1/10



H.C.P.No.938 of 2023

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 25.03.2023 in No.73/BCDFGISSSV/2023 against the petitioner's son Moorthy, male aged 43 years, son of Arumugam at present who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.S.Rajesh

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

ORDER

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

When the captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] was listed in the Admission Board on 01.06.2023, this Court made the following order:

'H.C.P.No.938 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 24.04.2023 inter alia assailing a detention order dated



H.C.P.No.938 of 2023

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25.03.2023 bearing reference No.73/BCDFGISSSV/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. To be noted, Mother of the detenu is the petitioner.

3. Mr.S.Rajesh, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 8(c) read with 20(b)(ii)(B) of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' ['NDPS' for the sake of brevity] in Crime No.62 of 2023 on the file of Prohibition Enforcement Wing, Washermenpet.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) of '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].

5. The detention order has been assailed inter alia on the ground that some of the pages in the booklet furnished to the detenu were illegible which prevented the detenu from making an effective representation.

6. Prima facie case made out for admission. Admit. Issue Rule



H.C.P.No.938 of 2023

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nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor; State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2.The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore we are not setting out the same again in this order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 25.03.2023 bearing reference No.73/BCDFGISSSV/2023' made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

3. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel posited his challenge to the impugned preventive detention order on the point that some of the pages in the booklet furnished to the detenu were illegible and this has impaired the



H.C.P.No.938 of 2023

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detenu's right to make an effective representation but in the final hearing today, Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner changed the line of attack and predicated 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. Elaborating on this point, learned counsel drew our attention to a portion of paragraph 3 of grounds of impugned preventive detention order, which reads as follows:

'....Further, the arrest intimation of the accused Thiru.Moorthy was communicated to his wife Tmt.Jeeva on the same day in person. On 27.02.2023, the accused Thiru.Moorthy was produced before the learned XVth Metropolitan Magistrate Court, George Town and lodged at Central Prison, Puzhal, Chennai as a remand prisoner till 13.03.2023.'

4. The aforementioned case being Crime No.327 of 2018 on the file of P4 Basin Bridge Police Station shall be referred to as 'Velazhaki's case' as Tmt.Velazhaki, wife of Thiru.Manivannan is the petitioner in that case. Adverting to Velazhaki's case bail order which is at pages 136 to 138 of the grounds booklet furnished to the detenu, learned counsel for petitioner



H.C.P.No.938 of 2023

submitted that in the Velazhaki's case, learned Special Public Prosecutor has said that there is no objection for the detenu being released on bail.

5. Learned counsel submitted that comparison of Velazhaki's case with the ground case in the case on hand to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed comparison.

6. In response to the aforementioned argument, learned Prosecutor submitted to the contrary. Learned Prosecutor pointed out that alleged offences in Velazhaki's case and the alleged offences in the ground case are clearly comparable. Learned Prosecutor also went on to say that the Special Public Prosecutor in Velazhaki's case had said that there is no objection for grant of bail as co-accused in Velazhaki's case has been granted bail and this has also been captured in the bail order in paragraph 3 captioned 'Point for Consideration'.

7. We carefully considered the rival submissions made by both sides. We find that a bail is a discretionary relief and various determinants and parameters operate qua grant of bail. A careful perusal of paragraph 3 of Velazhaki's case makes it clear that co-accused has been enlarged on bail



H.C.P.No.938 of 2023

and this is no doubt a reason for the Special Public Prosecutor to say that there is no objection for grant of bail but in the case on hand this point has no place in the scheme of things as the detenu is the sole accused in the ground case. This means that such a scenario can never unfurl in the case on hand. This further means that the Detaining Authority has compared the ground case with the bail order where a similar scenario is unlikely to unfurl under any given circumstances. In any event a bail order where learned Prosecutor has said 'no objection' for grant of bail can never be a benchmark for comparison for arriving at subjective satisfaction as regards imminent possibility of a detenu being enlarged on bail. This by itself means that the comparison is flawed. If the comparison is flawed, the subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged is clearly impaired as this Court has repeatedly held that imminent possibility is qua probability and not qua time.

8. If the subjective satisfaction arrived at by the Detaining Authority which is one of the important substratum of the impugned preventive detention order is impaired, the impugned preventive detention order



H.C.P.No.938 of 2023

deserves to be dislodged. We find that the case on hand is one where impugned preventive detention order has become vulnerable, vitiated and liable for being dislodged. We therefore set aside the impugned preventive detention order on the ground that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detenu being enlarged on bail is impaired.

9. Ergo, the sequitur is captioned HCP is allowed. Impugned detention order dated 25.03.2023 bearing reference No.73/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Moorthy, male, aged 43 years, son of Thiru.Arumugam 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.)

22.08.2023

Index : Yes

Neutral Citation : Yes

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

Page Nos.8/10



H.C.P.No.938 of 2023

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To

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Home, Prohibition and Excise Department
Secretariat, St.George Fort
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai, Office of the Commissioner of Police
(Drug Offenders Section), Vepery, Chennai – 600 007
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5. The Public Prosecutor
Madras High Court
Chennai



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H.C.P.No.938 of 2023

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

gpa

H.C.P.No.938 of 2023

22.08.2023

Page Nos.10/10