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H.C.P.No.716 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.716 of 2023**

Santhi

.. Petitioner

VS

State of Tamil Nadu Rep. by

1. The Secretary to Government  
Home, Prohibition and Excise Department,  
Fort St.George, Chennai – 600 009.

2.The District Collector and District Magistrate  
Thiruvarur District  
Thiruvarur

3. The Superintendent of Police  
Thiruvarur District  
Thiruvarur

4. The Superintendent of Prison  
Central Prison  
Tiruchirapalli

5. The Inspector of Police  
Prohibition and Enforcement Wing  
Nannilam  
Thiruvarur District

.. Respondents



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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 pertaining to the order of detention passed by the second respondent vide his proceedings C.O.C No.36/2023 dated 10.04.2023 against the petitioner's husband the detenu Kesavan, male, aged 58 years, son of Veerapathiran, now confined in Central Prison, Thiruchirapalli and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Rajkumar

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 wife of the detenu assailing a 'preventive detention order dated 10.04.2023 bearing reference C.O.C No.36/2023' [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.



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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-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 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.210 of 2023 on the file of Nannilam Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa) read with 4(1-A) of 'Tamilnadu Prohibition Act, 1937' [hereinafter 'TNP Act' for the sake of brevity]. 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.



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4. Mr.M.Rajkumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit qua captioned HCP, several grounds have been raised but in the final hearing, Mr.M.Rajkumar, learned counsel predicated his campaign against the impugned preventive detention order on one point and that one point turns on subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail. Learned counsel drew our attention to relevant portion in the grounds of impugned preventive detention order and the same (articulated in Paragraph 5 thereat) reads as follows:

*'5..... In similar case (i.e) Crime Number 183/2016 u/s.4(1)(aaa) r/w 4(1-A) TNP Act & Transport of Mayiladuthurai Prohibition Enforcement Wing, bail was granted by the court of Principal District and Sessions Judge, Nagapattinam in Cr.M.P No.943/2016 dated 11-04-2016 to an accused by name Tmt.Jayabharathi, W/o.Selvam.*

*Hence, I am satisfied that there is a real possibility of he (Thiru.Kesavan, Male, aged 58/2023, S/o.Veerapathiran) coming out on bail by filing a bail application for the above case before the High Court....'*



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6. Elaborating on the above submission, learned counsel submitted that in what according to detaining authority is a similar case, one *Jayabharathi* is petitioner and a perusal of *Jayabharathi's* bail order which is at Page 150 of the grounds booklet reveals that in *Jayabharathi's* case the prosecution has said 'no objection' to grant of bail.

7. We had the benefit of perusing *Jayabharathi's* case bail order, the relevant paragraph reads as follows:

*'It is contended and submitted on the side of the learned public prosecutor that there is no previous cases are pending as against the accused and the investigation is almost over and he has no serious objection to release the petitioner/accused on bail.'*

8. Learned Prosecutor submitted to the contrary and learned Prosecutor's submission is, alleged offences / charge in *Jayabharathi's* case and the ground case in the case on hand are broadly comparable but we are not inclined to accept this counter argument as uncontested bail order i.e., when the prosecution has not objected to bail order is virtually in the nature of a consent and therefore, the same cannot be used as a benchmark to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail particularly as imminent possibility is qua



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probability. To put it differently, it is a comparison which reminds one of the age old adage 'comparing apples and oranges'. Therefore, we have no hesitation in accepting the submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority is impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 10.04.2023 bearing reference C.O.C.No.36/2023 made by the second respondent is set aside and the detenu Thiru.Kesavan, aged 58 years, son of Thiru.Veerapathiran, 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, Tiruchirappalli.**



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To

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Thiruvarur 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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