



WEB COPY



H.C.P.No.737 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.737 of 2023

Mrs.Pappa

.. Petitioner

Vs

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai City
3. The Superintendent of Police
Central Prison, Puzhal, Chennai
4. The Inspector of Police
H-4, Korukkupet Police Station

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records in connection with the order of detention passed by the second respondent dated 12.12.2022 in No.462/BCDFGISSSV/2022 against the petitioner's

Page Nos.1/11



H.C.P.No.737 of 2023

grandson Thiru.Chiyan @ Chiyan Murugan, male, aged about 23 years, son of Dhanasekar, 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
assisted by Ms.M.Kokila

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 for Admission on 01.06.2023, this Bench made the following order:

'H.C.P.No.737 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 25.04.2023 inter alia assailing a detention order dated 12.12.2022 bearing reference No.462/BCDFGISSSV/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of



WEB COPY



H.C.P.No.737 of 2023

convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

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

3. Mr.M.Illiyas, 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 341, 294(b), 336, 427, 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] read with Section 4 of Tamil Nadu Prevention of Harassment of Women Act, 2002 in Crime No.294 of 2022 on the file of H4 Korukkupet Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) 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 family members of the detenue has not been informed about the detention of the detenu.

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



H.C.P.No.737 of 2023

2. The aforementioned Admission Board order dated 01.06.2023 captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same in this order again. The 'order dated 12.12.2022 bearing reference 462/BCDFGISSSV/2022 made by the Detaining Authority' shall be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

3. As would be evident from Paragraph 5 of the Admission Board order, at the time of admission, Mr.M. Illiyas, learned counsel for the petitioner posited his challenge to the impugned preventive detention order on the point that detention of the detenu had not been informed to the family members, however, today Mr.S.Senthilvel, learned counsel assisted by Ms.M.Kokila, learned counsel representing the counsel on record for the petitioner changed the line of attack qua his campaign against the impugned preventive detention order and submitted 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 drew our attention to a portion paragraph 4 of the grounds



H.C.P.No.737 of 2023

of impugned preventive detention order, which reads as follows:

WEB COPY

'4. I am aware that Thiru.Chiyan @ Chiyan Murugan is in remand in H4 Korukkupet Police Station Cr.No.294/2022. He has moved a bail application for H4 Korukkupet Police Station Cr.No.294/2022 before the learned XVth Metropolitan Magistrate Court, George Town in Crl.M.P.No.11627/2022 and the same was dismissed on 28.11.2022. The sponsoring authority has stated that he came to understand that the relatives of Thiru.Chiyan @ Chiyan Murugan are taking steps to take him out on bail in H4 Korukkupet Police Station Cr.No.294/2022 by filing another bail application before the appropriate court. Hence, I infer that there is a real possibility of his coming out on bail in H4 Korukkupet Police Station.....'

4. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that Detaining Authority has noticed and recorded the then obtaining position that bail petition filed by the detenu qua the ground case had been dismissed by the Magistrate Court concerned. Thereafter, by merely recording that the Sponsoring Authority has stated that he has come to understand that relatives of the detenu are taking steps to take detenu out on bail in the ground case, the Detaining Authority has inferred that there is real (imminent) possibility of the detenu coming out on bail.



H.C.P.No.737 of 2023

5. Learned counsel for petitioner submitted that no material has been referred to in the grounds of impugned preventive detention order and therefore, this subjective satisfaction is in the abstract. However, learned counsel very fairly pointed out that there is a special report from the Sponsoring Authority which is at page 114 of the grounds booklet. This special report does not contain a date but it has been signed by the Sponsoring Authority on 12.12.2022 i.e., the same date as the impugned preventive detention order.

6. In response to the aforementioned argument, learned Prosecutor submitted that aforementioned Special Report of the sponsoring authority is what impelled the Detaining Authority to infer that there is real (imminent) possibility of the detenu being enlarged on bail.

7. We carefully considered the submissions made on both sides.

8. From the grounds booklet placed before us, we find that at page 113, there is a statement under Section 161(3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] from the wife of the detenu regarding steps being taken for seeking



H.C.P.No.737 of 2023

bail for the detenu qua the ground case but the date on which this statement was recorded is not available.

9. As regards the Special Report of the Sponsoring Authority, it does not refer to the statement of detenu's wife but it merely talks about dismissal of the bail petition and says that detenu is taking steps to file another bail petition. The special report does not even talk about relatives of the detenu much less does it refer to the statement from detenu's wife. Therefore, it cannot be gainsaid that the special report pertains to the statement under Section 161(3) Cr.P.C of wife of the detenu. This means that the sole basis for the Detaining Authority to infer that there is imminent possibility of detenu being enlarged on bail is the special report of the Sponsoring Authority which does not bear a date but which has been signed by Sponsoring Authority on 12.12.2022 i.e., the same date on which the impugned preventive detention order was made. This means that the Detaining Authority in this case on hand has accepted the *ipse dixit* of the Sponsoring Authority. To be noted, in the case on hand other than noticing that the bail petition filed by the detenu in the ground case has been



H.C.P.No.737 of 2023

dismissed by the jurisdictional Judicial Magistrate, there is no mention about any similar case or any other material much less about statement from the detenu's spouse. We hasten to add that we are not saying that reference to similar case or such statements are jurisprudentially imperative for arriving at subjective satisfaction. All that we are saying is, the grounds refers only to the Sponsoring Authority and what the Sponsoring Authority has stated. It does not even refer to the special report much less the date on which the special report has been signed by the Sponsoring Authority. In this view of the matter, considering the unique and peculiar facts and circumstances of this case i.e., the case on hand, we come to the conclusion that the subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is flawed / impaired as rightly contended by the learned counsel for petitioner. In this regard, we remind ourselves that imminent possibility qua a detenu being enlarged on bail is qua probability and not qua time. This buttresses the conclusion that we have arrived at. This Court has repeatedly held that if the subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is impaired, the



H.C.P.No.737 of 2023

impugned preventive detention order deserves to be dislodged in a habeas

legal drill. We have no hesitation in saying that this is one such case.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.12.2022 bearing reference Memo No.462/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru.Chiyan @ Chiyan Murugan, aged 23 years, son of Thiru.Dhanasekar, 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

gpa

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



H.C.P.No.737 of 2023

To

WEB COPY

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai City
3. The Superintendent of Police
Central Prison, Puzhal, Chennai
4. The Inspector of Police
H-4, Korukkupet Police Station
5. The Public Prosecutor,
High Court, Madras.



WEB COPY



H.C.P.No.737 of 2023

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

gpa

H.C.P.No.737 of 2023

08.09.2023

Page Nos.11/11