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H.C.P.No.773 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

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THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.773 of 2023

Indira
W/o.Ravi

.. Petitioner

Vs

1. The Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamil Nadu
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Kancheepuram District
Kancheepuram.
3. The Superintendent of Police
Office of the Superintendent of Police
Kancheepuram District.
4. The Inspector of Police
All Women Police Station
Kancheepuram
Kancheepuram District.
5. The Superintendent
Central Prison
Puzhal, Chennai.

.. 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 pursuant to the order in Rc.No.38/2023/M6-D.O.No.12/2023 dated 12.04.2023 passed by the 2nd respondent and quash the same and consequently, produce the detenu Vignesh @ Vicky, aged about 22 years, son of Thiru.Ravi, before this Hon'ble Court and set him at liberty, the detenu is now confined in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.D.Arun
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind .C

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 mother of the detenu assailing a 'preventive detention order dated 12.04.2023 bearing reference Rc.No.38/2023/M6-D.O.No.12/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned preventive detention order has been made by second respondent.



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2. Impugned preventive detention order has been made under 'The

WEB CO 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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.3 of 2023 on the file of All Women Police Station, Kancheepuram for alleged offences under Sections 363, 376(D) and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' 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.



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4. Mr.D.Arun 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, learned counsel for petitioner at the hearing projected his argument qua challenge to the impugned preventive detention order on one point and that point is, similar case that has been relied on by the Detaining Authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is really not similar. Elaborating on the above submission, learned counsel drew our attention to a portion of paragraph No.5 of the grounds of impugned preventive detention order which reads as follows:

'5..... In Anaicut Police Station Crime No.327/2017 u/s.323, 294(b), 506(ii), 307, 376(D) of Indian Penal Code r/w 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002, the accused Thiru.Dhakshinamoorthy @ Moorthy s/o.Thulukkanam was released on bail through Principal Sessions Court, Kancheepuram at Chengalpattu in CrI.M.P.No.4430/2017 dated 18.12.2017.

Hence, I infer that there is real possibility of coming out on



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bail in above case since in similar cases bails are granted by the Courts after lapse of time.....'

6. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel for petitioner submitted that *Dhakshinamoorthy's case* i.e., bail order in *Dhakshinamoorthy's case* dated 18.12.2017 in CrI.M.P.No.4430 of 2017 on the file of Principal Sessions Judge, Kancheepuram at Chengalpattu is at page No.195 of the grounds booklet. To be noted, we had the benefit of perusing the grounds booklet. Adverting to *Dhakshinamoorthy's case* bail order, learned counsel submitted that *Dhakshinamoorthy's case* is one where the parties had compromised the matter amongst themselves and the *de facto* complainant herself had appeared before the Court and filed an affidavit saying that the complaint is false. Though the earlier bail petition was dismissed on the teeth of this version, in the 18.12.2017 order alluded to in the grounds of impugned preventive detention order, learned Sessions Judge had taken this compromise between the parties as a determinant/parameter for grant of discretionary relief of bail and therefore *comparison of Dhakshinamoorthy's case with the ground case for arriving*



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at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is flawed, is learned counsel's say.

7. In response to the aforementioned submission of learned counsel for petitioner, learned Prosecutor submitted that the offences in *Dhakshinamoorthy's case* and ground case are broadly comparable.

8. We carefully considered the rival submissions. This Court has repeatedly held that it is not a mere comparison of the alleged offences in the ground case and the similar case and it is also a comparison of determinants/parameters that are imperative qua grant of bail which is a discretionary order. In this view of the matter, we have no difficulty in sustaining the submission of learned counsel for petitioner. This means that the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed. In this regard, we also remind ourselves that imminent possibility is not qua time but it is qua probability. Therefore, the determinant/parameter which weighed in the mind of the learned sessions Judge for grant of bail assumes significance and to be noted, in this case, it is compromise and an affidavit has been filed by the *de facto* complainant by appearing in person before the



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Sessions Court.

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9. The sum sequitur of narrative and dispositive reasoning thus far is, impugned preventive detention order is vitiated and becomes liable for being dislodged in this habeas legal drill.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.04.2023 bearing reference Rc.No.38/2023/M6-D.O.No.12/2023 made by the second respondent is set aside and the detenu Thiru.Vignesh @ Vicky, male, aged 22 years, son of Thiru.Ravi, 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.)

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Index : Yes

Neutral Citation : Yes

Speaking

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

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

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To

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