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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.NO.768 OF 2023

G.Champalal .. Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Government
Prohibition and Excise Department
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police
Salem City.
Salem District.

3.The Superintendent of Prison
Central Prison Salem
Salem District.

4.The Inspector of Police
Kondalampatty Police Station
Salem City
Salem District. .. Respondents

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PRAYER: 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 Detention Order passed in C.M.P.No.139/Drug Offender/Salem City/2022 dated 31.10.2022 passed by the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu namely Rajesha Kumar Age 25 Son of Ghevaram, Kawas Street, Ummedabad Village, Meghwal, Jalor District, Rajasthan State who is now confined in Central Prison – Salem, Salem District before this Court and set him at liberty.

For Petitioner : Mr.R.Dinesh Kumar

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

O R D E R

[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

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detention order dated 31.10.2022 bearing reference C.M.P.No.139/Drug Offender/Salem City/2022 [hereinafter 'impugned 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 detention order has been made by second respondent.

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

3.There is no adverse case. This solitary case which is the sole substratum of the impugned detention order is Crime No.450 of 2022 on the file of Kondalampatty Police Station for alleged offence under Sections 273, 328 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake

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of convenience and clarity] read with Sections 6 and 24(1) of Cigarette and Other Tobacco Products Act, 2003 and Sections 57 and 59 of Food Safety and Standard Act, 2006 read with Section 8(c) read with 20(b)(ii)(B) 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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

5.Though several points have been urged / raised in the support affidavit qua captioned HCP, Mr.R.Dinesh Kumar, learned counsel on record for the petitioner in the hearing projected, predicated and posited his argument on one point and that one point turns on subjective satisfaction of Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Learned counsel submitted that the Detaining Authority has relied

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on a bail order dated 15.07.2020 in Crl.M.P.No.336 of 2020 on the file of Special Court for EC Act Cases, Salem vide Crime No.212 of 2020 for alleged offences under Section 8(c) read with 20(b)(ii)(B), 29(1) of NDPS Act on the file of Ethapur Police Station to arrive at subjective satisfaction.

6.Learned counsel for petitioner drew our attention to the grounds of detention wherein this aspect of the matter has been articulated. This is contained in paragraph 4 of the impugned grounds of detention and the relevant paragraph reads as follows:

'4.... ... I am also aware that bail has been granted by the Special Judge for EC Act Cases, Salem in C.M.P.No.323/2020, dated 15.7.2020 for a similar case of Yethapur PS Cr.No.212/2020, u/s. 8(c) r/w 20(b)(ii)(B) and 29(1) of Narcotic Drugs and Psychotropic Substance Act, 1985 registered against one Manikandan, who was remanded on 10.4.2020. Hence, I infer that there is a real

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possibility of him (Mohanraj @ Unnikrishnan coming out on bail for the above said case, since bails are granted for similar cases by the concerned court or the higher Court after efflux of certain time....."

7.Elaborating on the aforementioned submission, learned counsel for petitioner submitted that Manikandan's case is a default bail order under Section 167(2) of 'the Code of Criminal Procedure, 1973' [hereinafter 'Cr.P.C.' for the sake of brevity, convenience and clarity] and therefore, the comparison is completely flawed.

8.Learned State Additional Public Prosecutor submitted to the contrary and stated that the offences in Manikandan's case and the case on hand are broadly comparable, but we are not inclined to accept this argument as the Sessions Judge has little (no) discretion when it comes to a default bail under Section 167(2) of Cr.P.C., unlike a regular bail under Section 439 of Cr.P.C. Therefore, relying on the bail order in Manikandan's

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case to arrive at subjective satisfaction qua imminent possibility of the detenu being enlarged on bail in the case on hand is clearly flawed.

9.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 31.10.2022 bearing reference C.M.P.No.139/Drug Offender/Salem City/2022 made by the second respondent is set aside and the detenu Rajesha Kumar, Son of Ghevaram, aged 25 years, 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.)**

14.06.2023

Index : Yes
Speaking
Neutral Citation : Yes
TK

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

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To

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