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H.C.P.No.784 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

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

H.C.P.No.784 of 2023

Umamageshwari
W/o.Sakthivel

.. Petitioner / mother of Detenue

Vs.

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

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai.

3.The Superintendent of Police,
Central Prison,
Puzhal, Chennai.

4.The Inspector of Police,
J1, Saidapet Police Station,
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 produce the body of the petitioner's son namely Praveen @ Pallu Praveen, aged about 22 years, S/o.Sakthivel who is detained in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order in Proceedings in Memo No.50/BCDFGISSSV/2023, dated 21.02.2023, on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.B.Gopalakrishnan

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 mother of detenu assailing a 'preventive detention order dated 21.02.2023 bearing reference BCDFGISSSV No.50/2023' [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 impugned detention order has been made by second respondent.



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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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.31 of 2023 on the file of J-1 Saidapet Police Station for an alleged offence under Section 302 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 detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.B.Gopalakrishnan, learned counsel for petitioner and Mr.E.Raj



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Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. In the support affidavit many points/grounds have been raised/urged. However, in the hearing learned counsel for petitioner 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 qua imminent possibility of detenu being enlarged on bail. Elaborating on this argument, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and that portion reads as follows:

'... Further, in a similar case, registered at R-3 Ashok Nagar P.S. Cr.No.59/2021 u/s 147, 148, 449, 324 and 302 IPC, the bail was granted to the accused Thiru.Balaji by the Court of learned Principal Sessions, Chennai, in CrI.M.P.No.10485/2021. Further, in a similar case, registered at T-16 Nasarathpet P.S.Cr.No.725/2020, u/s.384 and 506(ii) IPC, the bail was granted to the accused Thiru.Naresh Kumar @ Naresh by the Court of learned Judicial Magistrate No.I, Poonamallee, in CrI.M.P.No.2128/2020. Hence, I infer that there is a real possibility of his coming out on bail in J-1 Saidapet Police Station



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Crime Nos.31/2023 and 32/2023 by filing bail application, since in similarly placed cases, bails were granted by the courts after a lapse of time. ...'

6. Adverting to the aforesaid portion of the grounds of impugned preventive detention order, learned counsel drew our attention to the grounds booklet served on the detinue and more particularly to pages 686 to 690 thereat. In pages 686 to 690 of the grounds booklet bail order in CrI.M.P.No.10485 of 2021 (Crime No.59/2021 on the file of R-3 Ashok Nagar Police Station) has been furnished to the detinue. To be noted, this 26.05.2021 bail order is in the case of one Balaji and therefore this case shall be referred to as **Balaji's** case. We had the benefit of perusing this **Balaji's** case bail order. We find that **Balaji's** case bail order turns largely on then obtaining Covid-19 situation. This is articulated in Paragraph 5 of the bail order of the learned Sessions Judge and the relevant portion of Paragraph 5 reads as follows:

'5. ... existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition. ...'

7. We also noticed that **Balaji's** case bail order is dated 26.05.2021



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and it was at a time when the hearings were only on a videoconferencing platform (virtual hearings).

8. In response to the above point, learned Additional Public Prosecutor submitted to the contrary and said that alleged offences in the two cases (Balaji's case and ground case) are largely comparable. After perusing **Balaji's** case bail order we are unable to accept this submission as determinants and parameters applied therein are completely different *inter alia* owing to reason delineated supra. Therefore, we have no difficulty in coming to the conclusion that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail is impaired. This means that the impugned preventive detention order is vitiated by this flaw and it deserves to be dislodged.

9. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 21.02.2023 bearing reference BCDFGISSSV No.50/2023 made by the second respondent is set aside and the detenu Thiru.Praveen @ Pallu Praveen, aged 22 years, son of



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Thiru.Sakthivel 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.)
07.08.2023

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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.

rsi

To

- 1.The Secretary to Government,
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Secretariat, Fort St. George,
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- 2.The Commissioner of Police,
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- 5.The Public Prosecutor
Madras High Court, Chennai

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