



WEB COPY



H.C.P.No.778 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.778 of 2023

Anand Babu

.. Petitioner/Uncle of the detenu

Vs.

1.The State of Tamilnadu
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department
Fort St.George,
Chennai – 600 009

2.The Commissioner of Police
Greater Chennai,
Vepery, Chennai – 600 007

3.The Superintendent of Prison
Central Prison, Puzhal,
Chennai – 600 066.

4.The Inspector of Police
P-6, Kodungaiyur Police Station
Chennai.

.. Respondents



H.C.P.No.778 of 2023

WEB COPY

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, call for the entire records leading to the detention of the petitioner's brother-in-law Manikandan @ Vellai Mani, S/o. Pakkiri, Male, aged about 30 years is presently lodged in Central Prison, Puzhal at Chennai – 600 066 and has been detained under Act 14/82 as a “Goonda” vide detention order dated 30.03.2023, made in Memo. No.91/BCDFGISSSV/2023 by the 2nd respondent, the Commissioner of Police, Greater Chennai, Vepery, Chennai – 600 007 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Puzhal at Chennai.

For Petitioner : Mr.M.Rajavelu

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 uncle of the detenu assailing a 'preventive detention order

Page Nos.2/8



H.C.P.No.778 of 2023

dated 30.03.2023 bearing reference No.91/BCDFGISSSV/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, fourth respondent is the sponsoring authority.

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

3. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.108 of 2023 on the file of P-6 Kodungaiyur Police Station for alleged offences under Sections 147, 148, 341, 302 and 506(ii) of 'The Indian Penal Code



H.C.P.No.778 of 2023

(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.

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

5. Learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on *Balaji's case* bail order being bail order dated 26.05.2021 in CrI.M.P.No.10485 of 2021 on the file of Sessions Court, Chennai. Relevant portion in paragraph No.3 of the grounds of detention reads as follows:



H.C.P.No.778 of 2023

'3. ... In a similar case registered u/s 147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station in Cr.No.59/2021, the bail was granted by the Principal Sessions Court, Chennai in Crl.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application in P-6 Kodungaiyur Police Station Crime No.108/2023 before the appropriate Court, since in a similar case, the bail was granted by court after a lapse of time. ...'

6. A careful perusal of *Balaji's case* bail order, more particularly paragraph 5 thereof brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail. Paragraph 5 of *Balaji's case* bail order reads as follows:

'5. The petitioners have been in custody for the past 75 days. No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

7. Learned Prosecutor submitted to the contrary by saying that alleged offences in *Balaji's case* and case on hand are broadly comparable.



H.C.P.No.778 of 2023

WEB COPY 8. We carefully considered the rival submissions.

9. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, *Balaji's case* would not apply to the case on hand as the impugned preventive detention order has been made on 30.03.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' is qua probability. Therefore, subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by the detaining authority by relying on a bail order wherein bail has been granted owing to then prevalent Covid-19 situation, has impaired the subjective satisfaction leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.



H.C.P.No.778 of 2023

WEB COPY

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 30.03.2023 bearing reference No.91/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Manikandan @ Vellai Mani, aged 30 years, Son of Thiru.Pakkiri, 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.)

11.09.2023

Index : Yes

Neutral Citation : Yes

Speaking order

rsi

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



WEB COPY



H.C.P.No.778 of 2023

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

rsi

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Fort St.George,
Chennai – 600 009
- 2.The Commissioner of Police
Greater Chennai,
Vepery, Chennai – 600 007
- 3.The Superintendent of Prison
Central Prison, Puzhal,
Chennai – 600 066.
- 4.The Inspector of Police
P-6, Kodungaiyur Police Station
Chennai.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P.No.778 of 2023

11.09.2023

Page Nos.8/8