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HCP No.819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.819 of 2023

Gokila

W/o.Ravikumar @ Rajendran

.. Petitioner

Vs.

1. The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Thiruvarur District.
3. The Superintendent of Police
O/o. Superintendent of Police
Thiruvarur District.
4. The Superintendent of Prison
Trichy Central Prison
Trichy District.
5. The Inspector of Police
Thiruthuraipoondi Police Station
Thiruvarur District.

..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 connected with the detention order in C.O.C.No.09/2023 dated 31.01.2023 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of petitioner's husband one named Thiru.Ravikumar @ Rajendran, aged about 39 years, now confined at Central Prison, Trichy before this Hon'ble Court and set him at liberty forthwith.

For Petitioner	:	Mr.P.Muthamizh Selvakumar
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 wife of the detenu assailing a 'preventive detention order dated 31.01.2023 bearing reference C.O.C.No.09/2023' [hereinafter 'impugned preventive detention order' for the sake of clarity, convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as the impugned preventive detention order has been made by second respondent.

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



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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.06 of 2023 on the file of Thiruthuraipoondi Police Station for alleged offences under Sections 397 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.

4. Mr.P.Muthamizh Selvakumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor



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for all respondents are before us.

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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, the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph No.4 of the grounds of detention and the relevant portion reads as follows:

'4. However in similar case in Crime Number 490/2022 u/s 341, 294(b), 397, 506(ii) of IPC of Tiruthuraipoondi Police Station, bail was granted by the Court of Judicial Magistrate Court, Tiruthuraipoondi in Cr.M.P.No.09/2023 dated 02.01.2023 to an accused by name Thiru.Ruban @ Amirtharuban'

6. Learned counsel submitted that aforementioned bail order in 'Ruban @ Amirtharuban's case' (hereinafter Ruban's case bail order for the sake of convenience) has been furnished to the detenu as part of the grounds booklet. Adverting to the bail petition as well as the bail order in the grounds



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booklet, learned counsel submitted that the aforementioned bail order dated 02.01.2023 made by the learned Judicial Magistrate, Thiruthuraipoondi, is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the subjective satisfaction is impaired.

7. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases are broadly comparable.

8. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.



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9. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 31.01.2023 bearing reference C.O.C.No.09/2023 made by the second respondent is set aside and the detenu Thiru.Ravikumar @ Rajendran, male, aged 39 years, son of Thiru.Chinnaiyan, 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.)
01.08.2023

Index : Yes
Speaking
Neutral Citation : Yes
mk

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

To



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1. The Additional Chief Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate
Office of the District Collector and District Magistrate
Thiruvarur District.
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5. The Inspector of Police
Thiruthuraipoondi Police Station
Thiruvarur District.
6. The Public Prosecutor
High Court, Madras.

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

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