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H.C.P.No.824 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

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

H.C.P.No.824 of 2023

Gunajothi

.. Petitioner

VS

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

2.The District Collector and District Magistrate,
Tiruvarur District, Tiruvarur.

3.The Superintendent of Police,
Tiruvarur District, Tiruvarur.

4.The Superintendent of Prison,
Central Prison, Tiruchirappalli.

5.The Inspector of Police,
Nannilam Police Station,
Tiruvarur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the detention order dated 29.03.2023 passed by the second respondent in his proceedings No.C.O.C. No.27/2023 and quash the same and direct the respondents herein to produce the petitioner's son namely Arul Jeeva, son of Raman, aged about



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21 years, who is presently undergoing detention in the Central Prison, Trichy as Goonda before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Vinoth
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

[Order of the Court was made by R.SAKTHIVEL, J.]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by the mother of the detenu on 09.05.2023 praying to set aside the detention order dated 29.03.2023 passed by the second respondent in his proceedings in C.O.C. No.27/2023 and to direct the respondents to produce the petitioner's son viz., Arul Jeeva, son of Raman, aged about 21 years before this Hon'ble Court and set him at liberty forthwith.

2. There is no adverse case. The ground case which is the sole substratum of the preventive detention order is Crime No.79 of 2023 on the file of Nannilam Police Station for the offences under Sections 341,397 and 120(B) of IPC. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the ground case.



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3. Though very many grounds have been raised in the support affidavit, the learned counsel for the petitioner at the time of hearing projected his argument against the impugned preventive detention order, more particularly, on one point, which is the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed exercise. The learned counsel drew our attention to a portion of paragraph (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) 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....'

4. Learned counsel submitted that the aforementioned bail order in Ruban @ Amirtharuban's case has been furnished to the detenu as part of the grounds booklet. Adverting to the bail order in the grounds booklet, the 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 referred as 'CrPC') and therefore the subjective satisfaction is flawed.



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5. Responding to the aforementioned argument, learned Additional Public Prosecutor has submitted that alleged offences / alleged charges in both cases are broadly comparable. Further, he has submitted that the detaining authority after considering all the materials supplied by the sponsoring authority, has passed the Detention Order, which is sustainable in the eye of law.

6. We had the benefit of perusing the grounds booklet. In the grounds booklet, Page No.62 is the bail order of *Ruban @ Amirtharuban*. The said bail order was passed under Section 167(2) of Cr.P.C. The bail Court has no discretion while dealing with the bail petition filed under Section 167(2) of CrPC unlike a regular bail under Section 437 CrPC or 439 CrPC. Therefore, comparison of default bail order under Section 167(2) CrPC with the ground case to arrive at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail is clearly an erroneous exercise. Hence, we are of the view that the impugned preventive detention order has been passed without applying mind. Hence, we decide that the impugned preventive detention order gets vitiated and is liable to be set aside.



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7. In the result, captioned HCP is allowed. Impugned preventive detention order dated 29.03.2023 bearing reference C.O.C. No.27/2023 made by the second respondent is set aside and the detenu Thiru.Arul Jeeva, aged 21 years, son of Thiru.Raman, 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.)
31.08.2023

Index : Yes
Neutral Citation : Yes
mmi

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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Tiruvarur District, Tiruvarur.
- 3.The Superintendent of Police,
Tiruvarur District, Tiruvarur.
- 4.The Superintendent of Prison,
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- 5.The Inspector of Police,
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Tiruvarur District.
- 6.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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