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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

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

H.C.P.No.833 of 2023

Rajeswari .. Petitioner

Vs

1.The State of Tamil Nadu rep. By its
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

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

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

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

5.The Inspector of Police,
Nannilam Police Station,
Thiruvarur 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 pertaining to the detention order dated 29.03.2023 in C.O.C. No.28/2023 passed by the second respondent and issue direction to produce the body of the detenu namely Ramesh, S/o.Ravichandiran,

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aged 27 years, presently confined at Central Prison, Thiruchirappalli, before this Court and set him at liberty forthwith and quash the same.

For Petitioner : Mr.Swami Subramanian

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 the mother of the detenu assailing a 'preventive detention order dated 29.03.2023 bearing reference C.O.C.No.28/2023' [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, fifth 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)'

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[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 two adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.79 of 2023 on the file of Nannilam Police Station for alleged offence under Section 394 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] subsequently altered into one under Sections 341 and 397 of IPC and again altered into one under Sections 341, 397 and 120(b) of IPC. 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.Swami Subramanian**,** learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

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5. Learned counsel predicated his campaign against the impugned preventive detention order on the point that 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 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.*
>
> *Hence, I infer that there is real possibility of (Thiru.Ramesh, Male, aged 27/2023, S/o.Ravichandran) coming out on bail by filing a bail application for the above case before the appropriate court and Higher Court....'*

6. Learned counsel submitted that aforementioned bail order in '*Ruban @ Amirtharuban*' (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

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in the grounds 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

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the same is liable to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.03.2023 bearing reference C.O.C.No.28/2023 made by the second respondent is set aside and the detenu Thiru.Ramesh, aged 27 years, son of Thiru.Ravichandran, 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.)**
17.08.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Thiruchirappalli.

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

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

3.The Superintendent of Police,

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Thiruvarur District, Thiruvarur.

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

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

6.The Public Prosecutor,
High Court, Madras.

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