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H.C.P.No.829 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.829 of 2023

Gullsanafer

W/o.Ziauddin Khan

.. Petitioner/Niece of detenu

Vs.

1.State of Tamilnadu,
Rep by Secretary to Government,
Prohibition and Excise Department
Secretariat,
Chennai – 600 009

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

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

4.The Superintendent,
Special Prison for Women, Vellore,
Vellore District.

5.The Inspector of Police,
Vadalore Police Station,
Cuddalore District.

.. Respondents



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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 records relating to the detention order passed by the second respondent in Proceedings C3/D.O./03/2023 dated 20.03.2023 against the petitioner's Aunty Selvi.Megarunisha, D/o.Abdul Subhan aged 67 years, who is now confined at Special Prison for Women, Vellore and set aside the same and direct the respondents to produce her before this Court and set her at liberty.

For Petitioner : Mr.M.Devaraj

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 niece of the detenu assailing a 'preventive detention order dated 20.03.2023 bearing reference No.C3/D.O./03/2023' [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.



H.C.P.No.829 of 2023

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 one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.49 of 2023 on the file of Vadalur Police Station for alleged offences under Sections 363 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 81 of 'Juvenile Justice Act, 2015' [hereinafter 'JJ Act' 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.Devaraj, 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. In the support affidavit qua captioned HCP several points have been raised but in the final hearing Mr.M.Devaraj, learned counsel for HCP petitioner drew the attention of this Court to a portion of paragraph 5 of the grounds of impugned preventive detention order and the same reads as follows:

'5. I am aware that Selvi.Megarunisha, D/o.Abdul Subhan has been remanded in judicial custody upto 20.03.2023 and lodged at Women Sub Jail, Cuddalore in connection with in Vadalur P.S. Cr.No.49/2023 u/s 363 IPC, r/w Sec.81 of Juvenile Justice Act 2015. I am aware that she has already filed a bail application before the Special Court for exclusive Trial of cases under POCSO Act, Cuddalore and the same were dismissed on 13.03.2023 in Crl.M.P.No.306/2023. In similar case in Meensurity P.S. Cr.No.355/2017, Sec. 81 and 87 of Juvenile Justice Act, 2015 bail was granted to the accused (Ramarajan, Meena) by the Court of Principal District Judge, Ariyalur in Crl.M.P.No.41/2018 dated 08.01.2018. (copy enclosed). Hence, I infer that there is likely hood of her (Selvi.Megarunisha, D/o.Abdul Subhan) coming out on bail in Vadalur Police Station Cr.No.49/2023, by filing another bail application for the above case in the competent court. ...'

6. Adverting to the above, learned counsel submitted that in **Ramarajan's** case (similar case) there is no offence under Section 363 of I.P.C. and therefore, the subjective satisfaction is impaired.



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7. In response to the above argument, learned Additional Public Prosecutor submitted that in Ramarajan's case Sections 81 and 87 of J.J. Act is there and in the ground case also Section 81 of J.J. Act is there.

8. We carefully considered the rival submissions. Considering the facts and circumstances of the case on hand, we find that Section 363 of IPC which is punishment for Kidnapping [to be noted, Kidnapping is offence vide Section 359 of IPC] is very important, as this offence turns on different determinants. This Bench reminds itself that with regard to imminent possibility of detenu being enlarged on bail and subjective satisfaction arrived at by detaining authority in this regard, it is not a mere broad comparison of the offences in the similar case and the case concerned but it is comparison of determinants / parameters too as imminent possibility is qua probability and not just qua time. In this view of the matter, considering the facts and circumstances of the case on hand, we are of the view that there being no alleged offence of Section 363 of IPC makes a sea of difference. Even if one goes by the prosecution theory comparing the bail order in Ramarajan's case with the ground case to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is a flawed exercise.



H.C.P.No.829 of 2023

This means that the subjective satisfaction is impaired. If subjective satisfaction is impaired, the impugned preventive detention order gets vitiated and becomes liable to be dislodged in a habeas legal drill.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 20.03.2023 bearing reference C3/D.O./03/2023 made by the second respondent is set aside and the detenu Selvi.Megarunisha, aged 67 years, Daughter of Thiru.Abdul Subhan, 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 Special Prison for Women, Vellore.



H.C.P.No.829 of 2023

To

WEB CLERK

- 1.The Secretary to Government,
Prohibition and Excise Department
Secretariat,
Chennai – 600 009
- 2.The District Magistrate and District Collector,
Cuddalore District,
Cuddalore.
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- 6.The Public Prosecutor
High Court, Madras.



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H.C.P.No.829 of 2023

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and
R.SAKTHIVEL, J.

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