



H.C.P.No.876 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

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

**H.C.P.No.876 of 2023**

Gunasekaran  
S/o.Ekambaram

.. Petitioner

Vs

1. Government of Tamil Nadu  
Rep. by its The Secretary  
Home Prohibition and Excise Department  
Secretariat,  
Chennai-600 009.
2. The District Collector and District Magistrate  
Kanchipuram  
Kanchipuram District.
3. The Superintendent of Police  
Kanchipuram  
Kanchipuram District.
4. The Superintendent  
Central Prison  
Puzhal, Chennai.
5. The State Rep. by  
The Inspector of Police  
All Women Police Station  
Kanchipuram 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 in detention order passed in Rc.No.37/2023/M6-D.O.No.11/2023 dated 12.04.2023 as "Sexual Offender" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of petitioner's son Thiru.Sivakumar @ Hooku, aged 20 years, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

**\* Prayer amended vide order dated 25.09.2023 in CrI.M.P.No.15200 of 2023 in HCP No.876 of 2023.**

|                 |   |                                                                              |
|-----------------|---|------------------------------------------------------------------------------|
| For Petitioner  | : | Mr.M.Yogeswaran                                                              |
| For Respondents | : | Mr.E.Raj Thilak<br>Additional Public Prosecutor<br>Assisted by Mr.Aravind .C |

## **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 father of the detenu assailing a 'preventive detention order dated 12.04.2023 bearing reference Rc.No.37/2023/M6-D.O.No.11/2023'

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[hereinafter 'impugned preventive detention order' for the sake of 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 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 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There is no adverse case. This solitary case which is the sole substratum of the impugned preventive detention order is Crime No.3 of 2023 on the file of All Women Police Station, Kancheepuram for alleged offences under Sections 363, 376(D) and 506(ii) of 'The Indian Penal Code



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

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, similar case that has been relied on by the Detaining Authority to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is really not similar. Elaborating on the above submission, learned counsel drew our attention to a portion of paragraph No.5 of the grounds of impugned preventive detention order which reads as follows:



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'5..... In Anaicut Police Station Crime No.327/2017 u/s.323, 294(b), 506(ii), 307, 376(D) of Indian Penal Code r/w 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002, the accused Thiru.Dhakshinamoorthy @ Moorthy s/o.Thulukkanam was released on bail through Principal Sessions Court, Kancheepuram at Chengalpattu in Crl.M.P.No.4430/2017 dated 18.12.2017.

Hence, I infer that there is real possibility of coming out on bail in above case since in similar cases bails are granted by the Courts after lapse of time.....'

6. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel for petitioner submitted that *Dhakshinamoorthy's case* i.e., bail order in *Dhakshinamoorthy's case* dated 18.12.2017 in Crl.M.P.No.4430 of 2017 on the file of Principal Sessions Judge, Kancheepuram at Chengalpattu is at page No.191 of the grounds booklet. To be noted, we had the benefit of perusing the grounds booklet. Adverting to *Dhakshinamoorthy's case* bail order, learned counsel submitted that *Dhakshinamoorthy's case* is one where the parties had compromised the matter amongst themselves and the *de facto* complainant herself had appeared before the Court and filed an affidavit saying that the complaint is false. Though the earlier bail petition



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was dismissed on the teeth of this version, in the 18.12.2017 order alluded to in the grounds of impugned preventive detention order, learned Sessions Judge had taken this compromise between the parties as a determinant/parameter for grant of discretionary relief of bail and therefore comparison of *Dhakshinamoorthy's case* with the ground case for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is flawed, is learned counsel's say.

7. In response to the aforementioned submission of learned counsel for petitioner, learned Prosecutor submitted that the offences in *Dhakshinamoorthy's case* and ground case are broadly comparable.

8. We carefully considered the rival submissions. This Court has repeatedly held that it is not a mere comparison of the alleged offences in the ground case and the similar case and it is also a comparison of determinants/parameters that are imperative qua grant of bail which is a discretionary order. In this view of the matter, we have no difficulty in sustaining the submission of learned counsel for petitioner. This means that



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the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed. In this regard, we also remind ourselves that imminent possibility is not qua time but it is qua probability. Therefore, the determinant/parameter which weighed in the mind of the learned sessions Judge for grant of bail assumes significance and to be noted, in this case, it is compromise and an affidavit has been filed by the *de facto* complainant by appearing in person before the Sessions Court.

9. The sum sequitur of narrative and dispositive reasoning thus far is, impugned preventive detention order is vitiated and becomes liable for being dislodged in this habeas legal drill.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.04.2023 bearing reference Rc.No.37/2023/M6-D.O.No.11/2023 made by the second respondent is set aside and the detenu Thiru.Sivakumar @ Hooku, male, aged 20 years, son of Thiru.Gunasekaran, is directed to be set at liberty forthwith, if not



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required in connection with any other case / cases. There shall be no order

as to costs.

(M.S.,J.)

(R.S.V.,J.)

27.09.2023

Index : Yes

Neutral Citation : Yes

Speaking

mk

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

To

1. Government of Tamil Nadu  
Rep. by its The Secretary  
Home Prohibition and Excise Department  
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate  
Kanchipuram  
Kanchipuram District.
3. The Superintendent of Police  
Kanchipuram, Kanchipuram District.
4. The Superintendent  
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5. The State Rep. by  
The Inspector of Police  
All Women Police Station  
Kanchipuram District.
6. The Public Prosecutor  
High Court, Madras.

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

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