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H.C.P.NO.868 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

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

H.C.P.NO.868 OF 2023

Rajesh

.. Petitioner

Vs.

1.State of Tamilnadu

Rep. By Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai – 600 009.

2.The Commissioner of Police

Tambaram City
Office of the Commissioner of Police
Solinganallur, Chennai – 600 119.

3.The Superintendent

Puzhal Prison
Chennai.

4.The Inspector of Police

T-13, Chitlapakkam Police Station,
Pallikaranai.

.. Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to call for the records on the file of the 2nd respondent in Order No.140/BCDFGISSSV/2022 dated 15.09.2022 quash the same and direct the respondents to produce the person or body of the detenu Thiru. Rajesh aged 25 years S/o. Venkatraman, set him at liberty who is now detained in Central Prison, Puzhal.

For Petitioner : Mr.M.Jaisingh

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 detenu assailing a 'preventive detention order dated 15.09.2022 bearing reference BCDFGISSSV No.140/2022 [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and



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second respondent is the detaining authority as the impugned detention order has been made by second respondent.

2.Impugned 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3.There is no adverse case. This ground case which is the sole substratum of the impugned detention order is Crime No.353 of 2022 on the file of Chitlapakkam Police Station for alleged offence under Section 8(c), 20(b)(ii)(C) of 'The Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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4.Mr.M.Jaisingh, learned counsel on record for petitioner and

Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.Though several points have been urged / raised in the support affidavit qua captioned HCP, Mr.M.Jaisingh, learned counsel on record for petitioner, in the final hearing predicated his campaign against impugned detention order on one point that finds favour with us and that one point turns on subjective satisfaction that has been arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. To be noted, subjective satisfaction has been arrived at by saying that the sponsoring authority has stated that the relatives of the detenu had taken steps to take him out on bail. This is articulated in one part of paragraph 4 of the grounds of impugned preventive detention order and the relevant paragraph reads as under:

'4..... However, the sponsoring authority has stated that it is learnt that Thiru Rajesh's relatives are taking



*steps to take him out on bail in T-13, Chitlapakkam P.S.
Cr.No.353/2022 by filing a bail application in appropriate
court. ...'*

6.In the grounds booklet supplied to the detenu, there is no statement and there is only a self serving special report from the sponsoring authority signed on 15.09.2022.

7.The aforementioned point turns heavily on records before us and therefore, the learned Public Prosecutor really does not have much of a say.

8.We have no hesitation in saying that the subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail is clearly flawed. This dispositive reasoning leads this order to the sequitur that the impugned detention order deserves to be dislodged.



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9.Apropos, the sequitur is, captioned HCP is allowed.

Impugned detention order dated 15.09.2022 bearing reference BCDFGISSSV No.140/2022 made by the second respondent is set aside and the detenu Rajesh, Son of Venkatraman, aged 25 years, 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.)

14.06.2023

Index : Yes

Speaking

Neutral Citation : Yes

TK

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



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