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H.C.P.No.900 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.900 of 2023

Elumalai

.. Petitioner /
detenu

Vs

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009
- 2.The District Collector and District Magistrate of
Tiruvannamalai District, Tiruvannamalai.
- 3.The Superintendent of Police,
Tiruvannamalai District, Tiruvannamalai.
- 4.The Superintendent of Prison,
Central Prison, Vellore – 2.
- 5.The Inspector of Police,
Thanipadi Police Station,
Tiruvannamalai District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying

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for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 11.05.2023 in D.O.No.48/2023-C2 against the petitioner Elumalai, male, aged 55 years, son of Sadaiyan, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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 11.05.2023 bearing reference D.O.No.48/2023-C2' [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.



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2. Impugned preventive detention order has been made under 'The

WEB CO 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 'Bootlegger' within the meaning of Section 2(b) 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.173 of 2023 on the file of Thanipadi Police Station for alleged offences under Sections 4(1)(aaa) r/w 4(1-A)(ii) of 'Tamil Nadu Prohibition Act, 1937' [hereinafter 'TNP 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.



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

5. Learned counsel on record for petitioner predicated his campaign against the impugned preventive detention order on the ground that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being released on bail is impaired.

6. Elaborating on the aforementioned point on subjective satisfaction, learned counsel for petitioner drew our attention to a portion of paragraph 5 of the impugned preventive detention order which reads as follows:

'5.....I am also aware that in a similar case registered in Tiruvannamalai Prohibition Enforcement Wing, Cr.No.376/2015 under section 4(1)(i) r/w 4(1-A)(ii) TNP Act, 1937 @ 4(1)(i), 4(1)(aaa) r/w 4(1-A)(ii) TNP Act, 1937 against Tmt.Bharathi W/o.Elumalai, was granted bail by the orders of the District Sessions Court, Tiruvannamalai in Crl.M.P.No.2206/2015 dated 03.07.2015. Hence I infer that there is a real possibility of him (Thiru.Elumalai) coming out on bail in the above bail application in the above court in the ground case, since bails are granted by the courts in such case....'



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7. We had the benefit of perusing the aforementioned bail order [we shall refer to the same as '*Bharathi's case*' as Bharathi is the petitioner therein]. Relevant paragraph in *Bharathi's case* bail order reads as follows:

'On behalf of the prosecution, it was submitted that the investigation in this case is almost over and the prosecution is not having any objection.'

8. Adverting to the aforementioned portion of *Bharathi's case* bail order, learned counsel for petitioner submits that a uncontested bail order i.e., where the prosecution has not objected to bail order is virtually in the nature of a consent and therefore, the same cannot be used as a benchmark to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail particularly as imminent possibility is qua probability. To put it differently, it is a comparison which reminds one of the age old adage 'comparing apples and oranges'. Therefore, we have no hesitation in accepting the submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority is impaired. The sequitur is, impugned preventive detention order deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 11.05.2023 bearing reference



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D.O.No.48/2023-C2 made by the second respondent is set aside and the detenu Thiru.Elumalai, aged 55 years, Son of Thiru.Sadaiyan, 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

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



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To

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6. The Public Prosecutor,
High Court, Madras.



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

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