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H.C.P.No.946 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

Coram

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

H.C.P.No.946 of 2023

Ponnusamy

.. Petitioner /
Father of detenu

VS

1.The Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Fort St.George
Chennai – 600 009

2. The District Collector
and District Magistrate
Erode District
Erode

3. The Superintendent of Police
Erode District
Erode

4. The Superintendent of Prison
Central Prison- Coimbatore
Coimbatore District

5. State by its
The Inspector of Police
Erode North Police Station
Erode 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 relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order dated 11.11.2022 on the file of the second respondent herein made in proceedings Memo Cr.M.P.No.40/Goonda/2022/C1 quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Thavaselvan, son of Ponnusamy, aged 21 year before this Court and set the petitioner's son at liberty

For Petitioner : Mr.J.Jayan
for Mr. W.Camyles Gandhi

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 06.06.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 22.05.2023 inter alia assailing a detention order dated 11.11.2022 bearing reference No.Cr.M.P.No.40/Goonda/2022 C1 made by 'second respondent' [hereinafter 'Detaining Authority' for



the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

2. To be noted, father of the detenu is the petitioner.

3. Mr.W.Camyles Gandhi, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 294(b), 341, 307, 392 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.373 of 2022 on the file of Erode North Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sandoffenders, 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].

5. The detention order has been assailed inter alia on the ground that some of the pages in the ground booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly. '



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2. The aforementioned order made in the 06.06.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are four adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.373 of 2022 on the file of Erode North Police Station for alleged offences under Sections 294(b), 341, 307, 392 and 506(i) of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve more into the factual matrix or be detained further by facts.

4. Mr.J.Jayan, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. At the time of admission i.e., in the admission board, the learned counsel for petitioner posited his arguments qua impugned preventive detention order on the ground that some of the pages in the grounds



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booklet furnished to the detenu are illegible / not readable (to be noted, this is captured in paragraph 5 of the admission order, which has been extracted and reproduced supra), but in the final hearing, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired. Elaborating his submissions in this direction, learned counsel drew our attention to a portion of paragraph 3 of the grounds of impugned preventive detention order and the same reads as follows:

'I am aware that the bail was granted to Thiru. Thavaselvam in Erode District, Erode North Police Station, Crime No.302/2022 under Section 392 Indian Penal Code and Crime No.373/2022 under Section 294(b), 341, 307, 392 and 506(ii) Indian Penal Code cases, by the order of the Judicial Magistrate No.1, Erode in Criminal Miscellaneous Petition Numbers 12591/2022 and 12580 dated 06.10.2022 respectively. However, I am aware he was in judicial custody in Erode South Police Station Crime No.13/2022 case and in this case his remand period has been extended till 24.11.2022. Further,I am aware that, there is real possibility he has coming out bail in future by filing bail petition in Erode South Police Station case before the concerned Court.'



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6. Learned counsel submitted that Crime No.373 of 2022 is the ground case and that is for alleged offence *inter alia* under Section 307 IPC. Learned counsel drew our attention to the order in Cr.M.P.No.12589 of 2022 dated 06.10.2022 and submitted that, that is the default bail under Section 167(2) Cr.P.C. As regards Crime No.13 of 2022, it is first adverse case and that is for alleged offences under Sections 450, 392 read with 394 IPC.

7. Be that as it may, bail being granted in the ground case is a default bail under Section 167(2) where the Sessions Judge really does not have discretion. It turns more on arithmetics. Therefore, citing that and coming to the conclusion that there is imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. This Court also reminds itself that imminent possibility of a detenu being enlarged on bail is not qua time but it is qua probability. In this view of the matter, we have no hesitation in accepting the argument of learned counsel for petitioner that the subjective satisfaction arrived at by the Detaining Authority is flawed. To be noted, argument of learned Prosecutor that the offences are broadly comparable really does not cut ice with us and it is not just offence and it is determinants / parameters for grant of bail. In this view of the matter, a default bail under section 167(2) Cr.P.C cannot



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be taken as a benchmark for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail also. Therefore, impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 11.11.2022 bearing reference Cr.M.P.No.40/Goonda/2022/C1 made by the second respondent is set aside and the detenu Thiru.Thavaselvam, aged 21 years, son of Thiru.Ponnusamy, 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.)
03.07.2023

Index : Yes

Neutral Citation : Yes

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



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To

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5. The Inspector of Police
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6. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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