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H.C.P.No.917 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.917 of 2023

Malliga

W/o.Varadharajan

.. Petitioner/Mother of detenu

Vs.

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

2.The Commissioner of Police / Detaining Authority,
Greater Chennai Police,
Chennai.

3.The Superintendent,
Central Prison, Puzhal,
Chennai.

4.State rep by
The Inspector of Police,
K-1 Sembium Police Station,
Chennai 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 in connection with the order of detention passed by the 2nd respondent dated 19.04.2023 in Memo No.113/BCDFGISSSV/2023 against the petitioner's son Mr.Venkatesan, M/30 years, Son of Varadharajan, who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.A.Saranraj
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 mother of the detenu assailing a 'preventive detention order dated 19.04.2023 bearing reference No.113/BCDFGISSSV/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, fourth respondent is the sponsoring authority.



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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.102 of 2023 on the file of K-1 Sembium Police Station for an alleged offence under Section 302 of 'The Indian Penal Code (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.A.Saranraj, 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. Learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on *Balaji's case* bail order being bail order dated 26.05.2021 in Crl.M.P.No.10485 of 2021 on the file of Sessions Court, Chennai. Relevant portion in paragraph No.4 of the grounds of detention reads as follows:

'4. ... In a similar case registered u/s 147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station in Cr.No.59/2021, the bail was granted by the Principal Sessions Court, Chennai in Crl.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application in K-1 Sembium Police Station Crime No.102/2023 before the appropriate Court, since in a similar case, the bail was granted by court after a lapse of time. ...'

6. A careful perusal of *Balaji's case* bail order, more particularly paragraph 5 thereof brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail.



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Paragraph 5 of *Balaji's case* bail order reads as follows:

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'5. The petitioners have been in custody for the past 75 days. No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

7. Learned Prosecutor submitted to the contrary by saying that alleged offences in *Balaji's case* and case on hand are broadly comparable.

8. We carefully considered the rival submissions.

9. Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, *Balaji's case* would not apply to the case on hand as the impugned preventive detention order has been made on 19.04.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' is qua probability. Therefore, subjective



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satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by the detaining authority by relying on a bail order wherein bail has been granted owing to then prevalent Covid-19 situation, is impaired leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 19.04.2023 bearing reference 113/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Venkatesan, aged 30 years, Son of Thiru.Varadharajan, 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 Central Prison, Puzhal, Chennai.



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To

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Chennai.
- 3.The Superintendent,
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K-1 Sembium Police Station,
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- 5.The Public Prosecutor
High Court, Madras.



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and
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