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H.C.P.No.1018 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM

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

H.C.P.No.1018 of 2023

Gowri

W/o.Venkadesan @ Venkatesh

.. Petitioner

Vs

1. The Secretary to Government
Home Prohibition and Excise Department
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate
Kancheepuram
Kancheepuram District.
3. The Superintendent of Police
Kancheepuram
Kancheepuram District.
4. The Superintendent
Central Prison
Puzhal, Chennai.
5. State Rep. by
The Inspector of Police
All Women Police Station
Kancheepuram District.

.. Respondents



H.C.P.No.1018 of 2023

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 connection with the order of detention passed by the 2nd respondent dated 12.04.2023 in Rc.No.39/2023/M6-D.O.No.13/2023 against the petitioner's son Manikandan @ Oomai, male, aged 22 years, son of Venkatesh @ Venkatesh, who is confined at Central Prison, Puzhal, Chennai and set aside the same and consequently direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.A.Saranraj
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind .C

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity].

2. When the captioned HCP was listed before this Court 'For Admission' on 19.06.2023, the following proceedings / order was made:

'H.C.P.No.1018 of 2023

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



H.C.P.No.1018 of 2023

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 02.06.2023 inter alia assailing a detention order dated 12.04.2023 bearing reference Rc.No.39/2023/M6-D.O.No.13/2023 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, mother of the detenu is the petitioner.

3. Mr.A.Saranraj, 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 363, 376(D) and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.03 of 2023 on the file of All Women Police Station, Kancheepuram.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Sexual Offender' under Section 2(ggg) of '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].

5. The detention order has been assailed inter alia on the ground that live and proximate link between grounds of detention and purpose of detention has snapped as the detenu was arrested



on 20.01.2023 but the impugned preventive detention order has been made on 12.04.2023.

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

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

3. The aforementioned Admission Board order captures all essentials that are imperative for appreciating this order and therefore we are not setting out the same again in this order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this order. Be that as it may, we are using the short forms, short references and abbreviations used in the Admission Board order in this order also for the sake of convenience and clarity. To be noted, 'detention order dated 12.04.2023 bearing reference Rc.No.39/2023/M6-D.O.No.13/2023 made by the Detaining Authority shall hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.



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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.

5. A perusal of paragraph No.5 of aforementioned Admission Board order dated 19.06.2023 brings to light that at the time of admission, learned counsel for petitioner posited his challenge to the impugned preventive detention order on the ground that live and proximate link between grounds of detention and purpose of detention has snapped as the detenu was arrested on 20.01.2023 but the impugned preventive detention order has been made on 12.04.2023 but today in the final hearing Board, Mr.A.Saranraj, learned counsel for petitioner changed his line of attack and submitted that 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.315 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.39/2023/M6-D.O.No.13/2023 made by the second respondent is set aside and the detenu Thiru.Manikandan @ Oomai, male, aged 22 years, son of Thiru.Venkatesh, is directed to be set at liberty forthwith, if not required



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in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

26.09.2023

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. The Secretary to Government
Home Prohibition and Excise Department
Secretariat,
Chennai-600 009.
2. The District Collector and District Magistrate
Kancheepuram
Kancheepuram District.
3. The Superintendent of Police
Kancheepuram
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6. The Public Prosecutor
High Court, Madras.

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and
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