



H.C.P.Nos.989 and 990 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.Nos.989 and 990 of 2023

H.C.P.No.989 of 2023

Tmt.Indirani

.. Petitioner
Wife of the detenu

Vs.

1. The Government of Tamil Nadu
Rep. By its Secretary
Home, Prohibition and Excise Department
Fort St.George, Chennai - 9
2. The District Magistrate and District Collector
Salem District, Salem
3. The Superintendent of Prison
Central Prison, Coimbatore
4. The Superintendent of Police
Salem
5. The Inspector of Police
Karipatty Police Station, Salem

..Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of direction to call for the records relating to the detention order passed by the 2nd respondent in C.M.P.No.03/Goonda/C2/2023 dated 03.05.2023 and quash the same and consequently direct the respondents to produce the detenu G.Sakthivel, son of Govindasamy, aged about 35 years, before this Court, now he is detained in the Central Prison, Coimbatore and to release and set him at liberty forthwith.

H.C.P.No.990 of 2023

A.Rajeswari
Wife of Anbalagan

.. Petitioner
wife of the detenu

Vs.

1. The Government of Tamil Nadu
Rep. By its Secretary
Home, Prohibition and Excise Department
Fort St.George, Chennai - 9
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Karipatty Police Station, Salem

..Respondents



H.C.P.Nos.989 and 990 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of direction to call for the records relating to the detention order passed by the 2nd respondent in C.M.P.No.02/Goonda/C2/2023 dated 03.05.2023 and quash the same and consequently direct the respondents to produce the detenu Anbalagan, son of Rathinavel, aged about 40 years, before this Court, now he is detained in the Central Prison, Coimbatore and to release and set him at liberty forthwith.

For Petitioner
(in both HCPs) : Ms.M.S.Sindhuza

For Respondents : Mr.Raj Thilak
(in both HCPs) Additional Public Prosecutor

COMMON ORDER

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

This common order will now dispose of both the captioned 'Habeas Corpus Petitions' ['HCPs' for the sake of brevity, convenience and clarity].

2. When the captioned HCPs were listed for Admission on 13.06.2023, the following orders were made:

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H.C.P.Nos.989 and 990 of 2023

and
R.SAKTHIVEL, J.

(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 03.05.2023 bearing reference C.M.P.No.03/GOONDA/C2/2023 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, Wife of the detenu is the petitioner.

3. Mr.P.Vijendran, 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 147, 148 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.35 of 2023 on the file of Karipatty 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, 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].



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5. *The detention order has been assailed inter alia on the ground that subjective satisfaction there is imminent possibility of the detenu being enlarged on bail has been arrived at by the Detaining Authority by placing reliance on an order dated 08.07.2021 in Crl.M.P.No.2069 of 2021 but the same has not been enclosed in the grounds booklet.*

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.'*

'H.C.P.No.990 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

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

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3. The aforementioned Admission Board orders dated 13.06.2023 capture all essentials i.e., essentials imperative for appreciating this



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common order and therefore, we are not setting out the same again in this final order.

4. As would be evident from the aforementioned Admission Board orders, in the captioned two HCPs, at the time of admission, Mr.P.Vijendran, learned counsel for petitioners posited his challenge to the impugned preventive detention orders on the ground turning on subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail has been arrived at by the Detaining Authority by placing reliance on an order dated 08.07.2021 in CrI.M.P.No.2069 of 2021 but the same has not been enclosed in the grounds booklet. but Ms.M.S.Sindhuza, learned counsel on record for the petitioners in the captioned HCPs in the final hearing Board, changed her line of attack qua her campaign against the impugned preventive detention orders and submitted that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is clearly impaired. Elaborating on this submission, learned counsel drew our attention to one portion of the grounds of impugned preventive detention orders, which reads as follows:

'4.....In a similar case, I am also aware that bail has been



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granted by the Principal Sessions Judge Court in Crl.M.P.No.2069/2021, dated 8.7.2021 for a similar case of Salem City, Salem Town Police Station Cr.No.277/2021, u/s.294(b), 302 and 324 IPC registered against one Gokula Krishnan and Suresh, who were remanded on 11.4.2021. Hence, there is a real possibility of his (Thiru.Anbalagan) coming out on bail by filing a bail application for the above case before the Higher Court.....'

5. Learned counsel adverting to grounds booklet submitted that as regards C.M.P.No.2687/2021 in C.M.P.No.2069 of 2021 and order dated 16.08.2021, the same has been furnished as part of the grounds booklet but a perusal of the same brings to light that what has been provided to the detenu is not a bail order. A further careful perusal of this order made by a learned Principal Sessions Judge brings to light that it is a relaxation order relaxing one of the conditions imposed on the petitioners at the time of grant of bail.

6. Learned counsel submitted that this is clearly non-application of mind on the part of the Detaining Authority and therefore, her challenge to the impugned preventive detention orders deserves to be sustained.



7. In response to the above arguments, learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that it is an inadvertent clerical error and the order relaxing the bail condition has been included in the grounds booklet instead of the bail order.

8. We carefully considered the submissions made on both sides.

9. Subjective satisfaction that a Detaining Authority arrives at qua imminent possibility of detenu being enlarged on bail is an important determinant of any impugned preventive detention order. In the case on hand, such subjective satisfaction has been arrived at by the Detaining Authority by relying on a bail condition relaxing order by referring to the same as a bail order. Therefore, such subjective satisfaction is clearly impaired. This Court has repeatedly held that impairment of such subjective satisfaction leaves the impugned preventive detention order vitiated and leaves it liable for being dislodged in a habeas legal drill.

10. Referring to a bail condition relaxation order as bail order is also a clear case of non-application of mind on the part of the Detaining Authority and this also vitiates the impugned preventive detention order warranting interference in the same vide the habeas legal drill on hand.



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This not only baffles the detenu but also seriously afflicts the right of the detenu to make an effective representation qua impugned preventive detention order. This Court has repeatedly held that right of detenu to make an effective representation against impugned preventive detention order is a Constitutional guarantee ingrained in Article 22(5) of the Constitution of India and breach of the same leads to dislodgement of impugned preventive detention orders. In the case on hand, we have no hesitation in saying that Constitutional safeguard ingrained in Article 22(5) has been affected as the baffled detenues will certainly have their rights to make an effective representation qua impugned preventive detention orders seriously affected. In the light of the narrative, discussion and dispositive reasoning set out supra, we have no hesitation in saying that both the impugned preventive detention orders deserve to be dislodged.

11.1. Ergo, the sequitur is, HCP No.989 of 2023 is allowed. Impugned preventive detention order dated 03.05.2023 bearing reference C.M.P.No.03/Goonda/C2/2023 made by the second respondent is set aside and the detenu Thiru.G.Sakthivel, aged 35 years, male, son of Thiru.Govindasamy 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.

11.2. Apropos, HCP No.990 of 2023 is allowed. Impugned preventive detention order dated 03.05.2023 bearing reference C.M.P.No.02/Goonda/C2/2023 made by the second respondent is set aside and the detenu Thiru.Anbalagan, aged 40 years, male, son of Thiru.Rathinavel 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

Speaking order

Neutral Citation : Yes

gpa

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



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To

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6. The Public Prosecutor
Union Territory of Puducherry



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