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H.C.P.No.1049 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.1049 of 2023

Tmt.Soundaram

.. Petitioner/
Mother of the detenu

VS

1. The Government of Tamil Nadu
Rep. By its Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The District Magistrate and District Collector
Salem District, Salem
3. The Superintendent of Prison
Central Prison Coimbatore
Coimbatore
4. The Superintendent of Police
Salem
5. The Inspector of Police
Karipatty Police Station, Salem

.. Respondents

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



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detention order passed by the 2nd respondent in C.M.P.No.04/Goonda/C2/2023 dated 03.05.2023 and quash the same and consequently direct the respondents to produce the detenu N.Ajithkumar, son of Nagalingam, aged about 26 years before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Vijendran
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.]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by mother of the detenu assailing a 'preventive detention order dated 03.05.2023 bearing reference C.M.P.No.04/Goonda/C2/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Impugned detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders,



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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 the impugned preventive detention order is Crime No.35 of 2023 on the file of Karipatty Police Station for alleged offences under Sections 147, 148 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the facts of the case.

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

5. In the support affidavit qua captioned HCP, several points have been raised but Mr.P.Vijendran, learned counsel for petitioner posited his argument today on one point and that one point turns on similar case that has been relied on by the Detaining Authority for arriving at subjective



satisfaction qua imminent possibility of the detenu being enlarged on bail.

This aspect of the matter has been articulated in the grounds of impugned preventive detention order in paragraph 4 and the relevant portion reads as follows:

'4..... In similar case, I am also aware that bail has been 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.Ajithkumar) coming out on bail by filing a bail application for the above case before the Higher Court....'

6.Learned counsel's argument is as follows:

i) Bail order dated 08.07.2021 in Crl.M.P.No.2069/2021 on the file of Principal Sessions Judge Court, Salem has not been furnished;

ii) On the contrary a bail relaxation order dated 16.08.2021 made in C.M.P.No.2687 of 2021 in Crl.M.P.No.2069/2021 has been furnished.

7. Adverting to the above, it was submitted that subjective satisfaction is impaired as Detaining Authority has arrived at subjective satisfaction by



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referring to a document which was not before him and right of the detenu to make an effective representation which is a constitutional guarantee ingrained in Article 22(5) of the Constitution has been impaired.

8. In response to the above argument, learned Prosecutor submitted that though the bail order *per se* has not been furnished to the detenu, the order by which bail condition was relaxed by the same Court has been furnished to the detenu.

9. We carefully considered the rival submissions.

10. We find that subjective satisfaction that has been arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is clearly flawed as there is nothing to demonstrate that 08.07.2021 bail order in *Gokula Krishnan's* case adverted to in the grounds of impugned preventive detention order vide portion of paragraph 4 extracted and reproduced supra was before the Detaining Authority. Absent 08.07.2021 order, the subjective satisfaction could not have been arrived at. This means that there are two consequences i) subjective satisfaction is impaired and ii) the impugned preventive detention order is vitiated owing to non-application of mind.



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11. In addition to the aforesaid points, as a bail condition relaxation order has been furnished to the detenu instead of the bail order which has been adverted to in the grounds of impugned preventive detention order, it cannot be ignored and the argument of learned counsel that the right of the detenu to make an effective representation has been impaired cannot be given a go by. This Court has repeatedly held that the right of a detenu to make an effective representation as against a preventive detention order is a constitutional guarantee ingrained in Article 22(5) and therefore it is very sacrosanct/sanctus. This Court has also held that breach of such sanctus/sacrosanct constitutional guarantee vitiates an impugned preventive detention order.

12. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying the impugned preventive detention order deserves to be dislodged.

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 03.05.2023 bearing reference C.M.P.No.04/Goonda/C2/2023 made by the second respondent is set aside



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and the detenu Thiru.Ajithkumar male, aged 26 years, Son of Thiru.Nagalingam, 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.)
21.09.2023

Index : Yes

Neutral Citation : Yes

Speaking order

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

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