



H.C.P.No.997 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

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

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Radha

.. Petitioner

Vs

- 1.The State of Tamil Nadu rep. By
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Tambaram City, Chennai – 119.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police,
T-1 Tambaram Police Station,
Entrustment Document Fraud,
Central Crime Branch,
Tambaram City, Chennai – 600 119.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records connected with the impugned order of detention passed by the second respondent in BCDFGISSSV No.05/2023 dated 27.02.2023 and



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quash the same and consequently direct the respondents to produce the detenu namely the petitioner's husband P.Rajavel, S/o.(late) Pakkiri, aged about 47 years detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.G.Balamanikandan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

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

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

2. When the captioned HCP was listed for Admission on 13.06.2023, the following proceedings/order was made:

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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 07.06.2023 inter alia assailing a detention order dated 27.02.2023 bearing reference BCDFGISSSV No.05/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.



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

3. Mr.G.Balamanikandan, 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 406, 420 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.79 of 2023 on the file of T-1, Tambaram PS (CCB, Tambaram City).

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.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 proceedings/order dated 13.06.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 13.06.2023 shall now be read as an integral part and parcel of the instant final order. This also means that the short forms, short references and abbreviations used in the aforementioned Admission



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Board order will continue to be used in the instant final order also.

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4. Before we proceed further, we make it clear that 'detention order dated 27.02.2023 bearing reference BCDFGISSSV No.05/2023 made by the detaining authority' shall hereinafter be referred to as the 'impugned preventive detention order' for the sake of convenience and clarity.

5. Mr.G.Balamanikandan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor assisted by Mr.C.Aravind, learned counsel for all the respondents are before us.

6. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel for petitioner posited his challenge against the impugned preventive detention order on the ground that some of the pages in the booklet furnished to the detenu are illegible, however, in the Final Hearing Board, learned counsel for petitioner changed his line of attack qua his campaign against the impugned preventive detention order and submitted that [subjective satisfaction arrived at by the detaining authority as regards](#)

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imminent possibility of detenu being enlarged on bail is impaired.

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7. Elaborating on the above submission, learned counsel drew our attention to a portion of paragraph 3 of the grounds of impugned preventive detention order, which reads as follows:

'3.... It is pertinent to note that in a case registered at T-13 Chitlapakkam P.S. Cr.No.405/2021 u/s 406, 420 IPC (under similar sections of law) bail was granted to the accused Jalaludeen Khan by the Judicial Magistrate No.I, Tambaram in CrI.M.P. No.1418/2021 dated 30.03.2021. Hence, I infer that there is a very likely of his coming out on bail in T-1 Tambaram PS (CCB/Tambaram) Cr.No.79/2023, since in similar case bail is granted by the courts after a lapse of time.....'

8. Learned counsel submitted that aforementioned bail order in '*Jalaludeen Khan's case*' (hereinafter '*Jalaludeen's case* bail order' for the sake of convenience) has been furnished to the detenu as part of the grounds booklet. Adverting to aforementioned *Jalaludeen's case* bail petition as well as bail order thereat i.e., *Jalaludeen's case* bail order in the grounds booklet, learned counsel submitted that the aforementioned bail order dated 30.03.2022 made by learned Judicial



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Magistrate – I, Tambaram is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail arrived at by the detaining authority is impaired.

9. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases i.e., ground case and *Jalaludeen's case* are broadly comparable.

10. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no real discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.



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11. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 27.02.2023 bearing reference BCDFGISSSV No.05/2023 made by the second respondent is set aside and the detenu Thiru.P.Rajavel, aged 47 years, son of Thiru.(Late) Pakkiri, 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.)
27.09.2023

Index : Yes

Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai – 66.

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police,
Tambaram City, Chennai – 119.
- 3.The Superintendent,
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- 4.The Inspector of Police,

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Entrustment Document Fraud,
Central Crime Branch,
Tambaram City, Chennai – 600 119.

5.The Public Prosecutor,
High Court, Madras.



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