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H.C.P.No.1014 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.1014 of 2023

Sheila

W/o.Murugaraj

.. Petitioner/wife of detenu

Vs.

1.The State represented by its

The Additional Chief Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamilnadu,
Tamilnadu Secretariat,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai-66.

4.The Inspector of Police,
S-7 Madipakkam Police Station,
Chennai.

.. 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 pertaining to the order of detention dated 17.04.2023 passed by the 2nd respondent in BCDFGISSSV No.110/2023 and quash the same and produce the detenu, Murugaraj aged about 47 years, Son of Dhatchinamurthy, detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Ms.S.Lakshmi

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

O R D E R

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

This final 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 us for Admission on 16.06.2023, the following order was made:



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M.SUNDAR, J.
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 17.04.2023 bearing reference BCDFGISSSV No.110/2023 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

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

3. Ms.K.Dheepakshi, 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 294(b), 342, 323, 355, 364(A), 387 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] in Crime No.87 of 2023 on the file of S-7 Madipakkam 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



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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 the similar case relied upon by the detaining authority is not really similar.

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.'

2. The aforementioned 16.06.2023 Admission Board order captures all essentials, i.e., all facts that are imperative for appreciating the final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned Admission Board order shall be read as an integral part and parcel of this final 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.

3. To be noted, 'detention order dated 17.04.2023 bearing reference BCDFGISSSV No.110/2023 made by the Detaining Authority' shall



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hereinafter be referred to as 'impugned preventive detention order' in this order for the sake of brevity, convenience and clarity.

4. Ms.S.Lakshmi, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for all the respondents are before us.

5. Today, Ms.S.Lakshmi, learned counsel on record for HCP petitioner advertng to paragraph 5 of the aforementioned admission board order drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order, which reads as follows:

'... Further, it is pertinent to note that in a case registered at J.6 Thiruvanniyur Police Station in Crime No.81/2023, u/s.294(b), 341, 324, 307 & 506(ii) IPC, bail was granted to the accused Thiru.Vinoth by the Court of Hon'ble Principal Sessions Judge at Chennai, in Crl.M.P.No.5571/2023. Hence, I infer that it is very likely of his coming out on bail in S-7 Madipakkam Police Station Crime Nos.87/2023 and 93/2023 cases, since, in similarly placed cases bails were granted by courts after a lapse of time. ...'



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6. Learned counsel submitted that the aforementioned **Vinoth** case has been relied on by the detaining authority as a similar case to arrive at subjective satisfaction that there is imminent possibility of detenu in the case on hand (Thiru.Murugaraj) being enlarged on bail. Learned counsel drew our attention to the ground case as captured in the grounds of impugned preventive detention order and the same reads as follows:

'... Based on the confession statement of the accused Thiru.Murugaraj, the Sections of the above case were altered as u/s.294(b), 342, 323, 355, 307, 364(A), 387, 506(ii) IPC. Further, their remand period was extended till 17.04.2023 periodically. ...'

7. Learned counsel submitted that the alleged offences in the ground case and Vinoth case are vastly different and therefore subjective satisfaction arrived at by the detaining authority (qua imminent possibility of detenu being enlarged on bail) is flawed.

8. In response to the above argument, learned Additional Public Prosecutor submitted that offences in the ground case and Vinoth case are broadly comparable.



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9. We carefully considered the rival arguments. We find that in the ground case even according to the prosecution theory, Section 364A of IPC is one of the alleged offences. But this is not there in Vinoth's case as would be evident from the extract *supra*. 364A of IPC-Kidnapping for ransom, etc. is an offence which can attract even capital punishment but none of the offence in Vinoth's case attracts capital punishment. This itself is very vital difference between the ground case and Vinoth's case. Therefore, this Court has no difficulty in accepting the submission of learned counsel for petitioner that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired / flawed. This means that the impugned preventive detention order is vitiated and becomes liable for being dislodged in a habeas legal drill.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.04.2023 bearing reference BCDFGISSSV No.110/2023 made by the second respondent is set aside and the detenu Thiru.Murugaraj, male, aged 47 years, son of



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Thiru.Dhatchinamurthy, 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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- 1.The Additional Chief Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamilnadu,
Tamilnadu Secretariat,
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police,
Greater Chennai.
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- 5.The Public Prosecutor,
High Court, Madras.



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

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