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H.C.P.No.1008 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

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

H.C.P.NO.1008 OF 2023

Kowsalya

.. Petitioner

VS.

State of Tamil Nadu Rep. by

1.The Secretary to Government
Home, Prohibition & Excise Department
Fort St. George,
Chennai – 600 009.

2.The District Collector and
District Magistrate
Chengalpet District,
Chengalpet.

3.The Superintendent of Police
Chengalpet District,
Chengalpet.

4.The Superintendent of Prison
Central Prison
Puzhal, Chennai.

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5.The Inspector of of Police
PEW – Madhuranthagam Police Station
Chengalpet District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed by the second respondent in No. CPT No.31/2023 dated 15.05.2023 against the petitioner husband Chandru male aged 32 years son of Elumalai, now confined in Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.Balaji

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.**]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] came up for admission on 15.06.2023, this Bench made an order and a scanned reproduction of the same is as follows:



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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 08.06.2023 *inter alia* assailing a detention order dated 15.05.2023 bearing reference CPT No.31/2023 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.M.Manimaran, 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 4(1)(aaa), 4(1)(b), 4(1)(g), 4(1)(h), 4(1-A) of the Tamil Nadu Prohibition Act, 1937 read with Rules 7 & 11 of Tamil Nadu Rectified Spirit Rules, 2000 (Transporting) and Sections 468, 471 and 420 of 'Indian Penal Code, 1860 (Act 45 of 1860)' [IPC' for brevity] in Crime No.118 of 2023 on the file of Madhuranthagam Prohibition Enforcement Wing.

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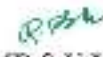
4. The aforementioned detention order has been made on the premise that the detenu is a 'Bootlegger' under Section 2(b) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, 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 family members of the detenu are not informed about the detention of the detenu.

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.


[M.S.J.]


[R.S.V.J.]

15.06.2023

mk



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2.The aforementioned Admission Board captures all essentials that are imperative for appreciating this order and therefore, we are not setting out the same again. However, short forms, short references and abbreviations used in the Admission Board order will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

3.Mr.T.Balaji, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor assisted by Mr.C.Aravind for all respondents are before us.

4.To be noted, 'order dated 15.05.2023 bearing reference CPT No.31/2023' made by second respondent / Detaining Authority shall in this order be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

5.Learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point which turns on subjective satisfaction arrived at by the Detaining Authority qua imminent



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possibility of the detenu being enlarged on bail. Learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on **Raji's case** bail order being bail order dated 25.08.2020 in CrI.M.P.No.2698 of 2020 on the file of Principal District and Sessions Judge of Chengalpattu. Relevant portion in paragraph No.5 of the grounds of detention reads as follows:

'5...And in similar nature of offences similar accused was already released on bail through appropriate court. i.e.,

In Prohibition Enforcement Wing, Madurantakam Cr.No.1688/2020 u/s. 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act read with 6 and 11 of Tamil Nadu Rectified Spirit Rules 2000 (Transporting) against the similar accused Raji, S/o.Murugan was released on bail through Principal District and Sessions Court, Chengalpattu in CrI.M.P.No.2698/2020 on 25.08.2020.

Hence I infer that there is a real possibility of his coming out on bail if he applied bail petition in the above ground case since in similar cases, bails are granted by the court after lapse of time.....'



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6.A careful perusal of **Raji's case** bail order, brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail. Relevant portion in **Raji's case** bail order reads as follows:

'There is no hospitalization due to consumption of poisonous arrack. The petitioner is in judicial custody for the past 14 days. In furtherance to the directions of the Hon'ble Chief Justice of High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in suo motu W.P (Civil) No.1/2020 in Re:Contagion of COVID-19 virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible.'

7.Learned Prosecutor submitted to the contrary by saying that alleged offences in **Raji's case** and case on hand are broadly comparable.



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8.We carefully considered the rival submissions.

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9.Covid - 19 situation in legal parlance is from 15.03.2020 to 28.02.2022 vide orders of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 wherein limitation across the Board was extended and therefore, ***Raji's case*** would not apply to the case on hand as the impugned preventive detention order has been made on 15.05.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' is qua probability. Therefore subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by Detaining Authority relying on a bail order wherein bail has been granted owing to then prevalent Covid-19 situation, has impaired the subjective satisfaction leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.

10.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 15.05.2023 bearing reference CPT



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No.31/2023 made by the second respondent is set aside and the detenu

Thiru.Chandru, aged 32 years, Son of Thiru. Elumalai, 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

TK

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



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To

- 1.The Secretary to Government
Home, Prohibition & Excise Department
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