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H.C.P.No.1099 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

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

H.C.P.No.1099 of 2023

R.Samanthi

.. Petitioner

Vs

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,
Greater Chennai, Vepery, Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
H-5, New Washermenpet Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the petitioner's son namely Siva, S/o.Rajan, aged about 24 years, who is detained in third respondent/The Superintendent, Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order dated

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19.04.2023 made in Memo No.115/BCDFGISSSV/2023 on the file of the second respondent herein and quash the same.

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For Petitioner : Mr.B.Gopalakrishnan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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 26.06.2023, the following proceedings/order was made:

'H.C.P.No. 1099 of 2023

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 19.06.2023 inter alia assailing a detention order dated 19.04.2023 bearing reference No.115/BCDFGISSSV/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, mother of the detenu is the petitioner.

3. Mr.B.Gopalakrishnan, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offence under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for



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the sake of brevity] in Crime No.135 of 2023 on the file of H5 New Washermenpet 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, 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 subjective satisfaction arrived at by the Detaining Authority that there is imminent possibility of the detenu being enlarged on bail is erroneous as the detenu has not filed any bail application.

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 26.06.2023 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 26.06.2023 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 Board order will continue to be used in the instant final order also. In addition to the short references in the Admission Board order, the



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detention order dated 19.04.2023 bearing reference No.115/BCDFGISSSV/2023 made by the detaining authority shall hereinafter be referred to as 'impugned preventive detention order' for the sake of convenience and clarity.

4. 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 subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is erroneous.

5. Elaborating on the aforementioned submission, in the Final Hearing Board today, learned counsel submitted that such subjective satisfaction has been arrived at by the Detaining Authority by relying on *Balaji's case* bail order being bail order dated 26.05.2021 in CrI.M.P.No.10485 of 2021 on the file of Sessions Court, Chennai. Relevant portion in paragraph No.4 of the grounds of impugned preventive detention order reads as follows:



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'4.....In a similar case registered u/s 147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station in Cr.No.59/2021, the bail was granted by the Principal Sessions Court, Chennai in Crl.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application in H5 New Washermenpet Police Station Cr.No.135/2023 before the appropriate court, since in a similar case, the bail was granted by court after a lapse of time.....'

6. A careful perusal of *Balaji's* case bail order, more particularly paragraph 5 thereof brings to light that the then prevailing Covid-19 situation had weighed in the minds of the learned Sessions Judge in granting bail. Paragraph 5 of *Balaji's* case bail order reads as follows:

'5.The petitioners have been in custody for the past 75 days. No previous case is reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

7. Learned Prosecutor submitted to the contrary by saying that alleged offences in *Balaji'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, *Balaji's case* would not apply to the case on hand as the impugned preventive detention order has been made on 19.04.2023. 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 the detaining authority by relying on a bail order wherein bail has been granted owing to then prevalent Covid-19 situation, is impaired 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 19.04.2023 bearing reference No.115/BCDFGISSSV/2023 made by the second respondent is set



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aside and the detenu Thiru.Siva, aged 24 years, Son of Thiru.Rajan, 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.)
15.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,
Greater Chennai, Vepery, Chennai.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
H-5, New Washermenpet Police Station,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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and
R.SAKTHIVEL, J.,**

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