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H.C.P.No.1241 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.1241 of 2023

K.Lakshmi

.. Petitioner /
Mother of the detenu

Vs

1. The State of Tamil Nadu
Rep. by its Secretary to Government, Home
Prohibition & Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai, The Commissioner Office
Vepery, Chennai – 600 007
3. The Inspector of Police
H-1, Washermenpet Police Station
Chennai District
4. The Superintendent of Police
Central Prison-II, Puzhal
Chennai - 66

.. Respondents



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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 detention order in BCDFGISSSV No.64/2023 dated 16.03.2023 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce my son Manikandan, son of Karthick, aged about 24 years, the detenu, now confined in Central Prison, Puzhal at Chennai before this Court and set him at liberty.

For Petitioner : Mr.K.Karthik

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

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) was listed in the Admission Board on 25.07.2023, the following order was made:

'H.C.P.NO.1241 OF 2023

M.SUNDAR, J.

AND

R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR, J.,)

*Mr.K.Karthik, learned counsel on record for petitioner
adverting to earlier proceedings dated 14.07.2023 expresses*



his regret for missing the matter (not representing the matter) in the previous listing.

2.Be that as it may, taking into account the fact that this is a case of preventive detention and considering the concerns of the petitioner and detenu, Admission Board order is made.

3.Captioned Habeas Corpus Petition has been filed in this Court on 19.06.2023 inter alia assailing a 'detention order dated 16.03.2023 bearing reference Memo No.64/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, third respondent is the Sponsoring Authority.

4.To be noted, mother of detenu is the petitioner.

5.Mr.K.Karthik, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 392 read with 394 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.52 of 2023 on the file of H1 Washermen Police Station.

6.The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of



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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].

7.The impugned preventive detention order has been assailed inter alia on the ground that the 'live and proximate link' between the grounds of detention and purpose of detention has snapped.

8.Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

9.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 Admission Board order 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.K.Karthik, learned counsel representing the counsel on record



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for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for

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all the respondents are before us.

4. In the Admission Board, learned counsel for petitioner projected his argument on the ground that the 'live and proximate link' between the grounds of detention and purpose of detention has snapped, but in the final hearing today, 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 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 *Balaji's case* bail order being bail order dated 26.05.2021 in Crl.M.P.No.10485 of 2021 on the file of Sessions Court, Chennai. Relevant portion in paragraph No.4 of the grounds of detention reads as follows:

'4..... In a similar case registered u/s.147, 148, 449, 324 and 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



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there is a real possibility of his coming out on bail in H1 Washermenpet Police Station Cr.No.52/2023 by filing another bail application before the appropriate court, since in a similar case, the bail was granted by court after a lapse of time.....

5. 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.'

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

7. We carefully considered the rival submissions.



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8. 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 16.03.2023. 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, has impaired the subjective satisfaction leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 16.03.2023 bearing reference No.64/BCDFGISSSV/2023 made by the second respondent is set aside and



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the detenu Thiru.Manikandan, male, aged 24 years, son of Thiru.Karthick, 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

Internet : Yes

Neutral Citation : Yes

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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 Secretary to Government, Home
Prohibition & Excise Department
Fort St.George
Chennai-600 009.
2. The Commissioner of Police
Greater Chennai, The Commissioner Office
Vepery, Chennai – 600 007
3. The Inspector of Police
H-1, Washermenpet Police Station
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4. The Superintendent of Police
Central Prison-II, Puzhal
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5. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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