



WEB COPY



H.C.P.No.1108 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM

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

H.C.P.NO.1108 OF 2023

Meena

.. Petitioner

Vs.

1.The Secretary to the Government
Home, Prohibition & Excise (XVI) Department
Secretariat,
Chennai – 600 009.

2.The Commissioner of Police
O/o. Commissioner of Police
Greater Chennai.

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

4.The Inspector of Police
R-11, Ramapuram Police Station,
Chennai District.

.. Respondents



H.C.P.No.1108 of 2023

PRAYER: 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, to call for the entire records connected with the detention order dated 16.11.2022 in No.425/BCDFGISSSV/2022 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of petitioner brother one named Mr.Raja @ Panni Raja S/o. Jeganathan aged about 29 years now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondents : Mr.A.Gokulakrishnan
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 04.07.2023, this Bench made an order and a scanned reproduction of the same is as follows:



WEB COPY



H.C.P.No.1108 of 2023

H.C.P.No.1108 of 2023

H.C.P.No.1108 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 20.06.2023 *inter alia* assailing a detention order dated 16.11.2022 bearing reference No.425/BCDFGISSSV/2022 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, sister of the detenu is the petitioner.

3. Mr.P.Muthamizh Selvakumar, learned counsel for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 341, 294(b), 336, 427, 397 and 506(ii) of 'Indian Penal Code, 1860 (Act 45 of 1860)' [IPC for the sake of brevity] in Crime No.250 of 2022 on the file of R-11 Ramapuram 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



WEB COPY



H.C.P.No.1108 of 2023

H.C.P.No.1108 of 2023

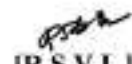
Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982) [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed *inter alia* on the ground that the Detaining Authority has belatedly served the grounds booklet to the detenu, 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.


[M.S.J.]


[R.S.V.J.]

04.07.2023

mk



H.C.P.No.1108 of 2023

2.The aforementioned order made in the 04.07.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3.Before proceeding further, we deem it appropriate to say that aforementioned 'preventive detention order dated 16.11.2022 bearing reference Memo No.425/BCDFGISSSV/2022' 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 aforementioned Admission Board order, at the time of admission, the point that the Detaining Authority has belatedly served the grounds booklet to the detenu was raised, but in the final hearing Board, Mr.P.Muthamizh Selvakumar, learned counsel for petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being



enlarged on bail is impaired. Elaborating on this point, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order and the same reads as follows:

'4...Further, in a similar case registered u/s 341, 294(6), 336, 324, 392, 427, 397 and 506(ii) IPC in R-6 Kumaran Nagar Police Station in Cr.No.527/2021, the bail was granted to the some other accused by the Court of the learned Principal Sessions Judge at Chennai in Crl.M.P.No.19198/2021. Hence, I infer that it is very likely of his coming out on bail in R-11 Ramapuram Police Station in Crime No.250/2022, since, in a similarly placed cases, the bail was granted by the courts, after a lapse of time...'

5.Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that the bail order referred to by the Detaining Authority is in the case of one Ashok (hereinafter be referred to as '**Ashok's case**' for the sake of convenience) and that **Ashok's case** bail order has been furnished to the detenu as part of the booklet at pages 381 to 383. Learned counsel drew our attention to paragraph



5 of **Ashok's case** bail order and the same reads as follows:

WEB COPY

'5. According to CPP, the petitioner is having one previous case. Injured was discharged from the hospital.'

6. Elaborating further on the aforementioned point, learned counsel submitted that in **Ashok's case** even according to the learned Sessions Judge who granted bail there was only one previous case whereas in the case on hand, even according to the impugned preventive detention order, there are as many as three adverse cases and one ground case. Therefore, the comparison of **Ashok's case** bail order with the ground case to arrive at subjective satisfaction qua imminent possibility of the detenu being enlarged on bail is clearly a flawed exercise is learned counsel's say.

7. In response to the aforementioned argument, learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that alleged offences in Ashok's case and the ground case are broadly comparable.

8. This Court carefully considered the rival submissions. This Court has repeatedly held that it is not merely the nature of the offences alleged but also the parameters/determinants for grant of bail which have to



H.C.P.No.1108 of 2023

be taken into account while comparing two cases for arriving at subjective satisfaction. Therefore, we have no difficulty in sustaining the arguments of the learned counsel for petitioner and saying that the comparison is bad, it vitiates the impugned preventive detention order and leaves it liable to be dislodged.

9.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.11.2022 bearing reference Memo No.425/BCDFGISSSV/2022 made by the second respondent is set aside and the detenu Thiru. Raja @ Panni Raja, aged 29 years, son of Thiru. Jeganathan 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.]

03.08.2023

Index : Yes

Neutral Citation : Yes

TK

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

To

8/10



H.C.P.No.1108 of 2023

- 1.The Secretary to the Government
Home, Prohibition & Excise (XVI) Department
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Police
O/o. Commissioner of Police
Greater Chennai.
- 3.The Superintendent of Prison
Central Prison
Puzhal, Chennai.
- 4.The Inspector of Police
R-11, Ramapuram Police Station,
Chennai District.
- 5.The Public Prosecutor
High Court, Madras.



WEB COPY



H.C.P.No.1108 of 2023

M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

TK

H.C.P.NO.1108 OF 2023

03.08.2023