



H.C.P.No.1158 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

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

H.C.P.No.1158 of 2023

Thenmoli

.. Petitioner

Vs

The State Represented by its

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St.George, Chennai – 9.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Thiruvarur District.
- 3.The Superintendent of Police,
O/o. The Superintendent of Police,
Thiruvarur District.
- 4.The Superintendent of Police,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Koradacherry Police Station,
Thiruvarur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the records

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pertaining to the order of detention dated 19.05.2023 passed by the 2nd respondent bearing No.C.O.C.No.40/2023 and quash the same and produce the detenu Ilayaraja, aged about 43 years, S/o. Thulasi, before this Court and set him at liberty forthwith from Central Prison, Cuddalore.

For Petitioner : Mr.R.Thirumoorthy
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.,**]

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 17.07.2023, the following proceedings/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 23.06.2023 inter alia assailing a 'detention order dated 19.05.2023 bearing reference C.O.C.No.40/2023' [hereinafter



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'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of clarity]. To be noted, fifth respondent is the Sponsoring Authority.

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

3. Mr.S.Rajanikanth, 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 341, 147, 148, 506(ii), 307 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] and subsequently, altered into Sections 120(B), 147, 148, 341, 427, 506(ii), 307 and 302 of IPC in Crime No.81 of 2023 on the file of Koradacherry Police Station.

4. 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 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 impugned preventive detention order has been assailed inter alia on the ground that a similar case bail order in the grounds booklet furnished to the detenu is not similar in nature.

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 17.07.2023 captures all essentials i.e., essential facts imperative for appreciating this final order and therefore we are not setting out the facts again.



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Suffice to say that the aforementioned Admission Board order dated 17.07.2023 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.

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

5. As would be evident from paragraph 5 of the Admission Board order dated 17.07.2023, at the time of admission, the point that similar case bail order in the grounds booklet furnished to the detenu is not similar in nature has been projected.

6. Elaborating on the aforementioned 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..... In similar case in Crime Number 358/2021
u/s 147, 148, 294(b), 452, 323, 324, 302 IPC of*



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Mayiladuthurai Police Station, bail was granted by the court of Hon'ble High Court, Chennai in CrI.O.P.No.9350/2021 dated 23.08.2021 to an accused by name Thiru.Ranjith, S/o.Neelamegam.....'

7. It is clear from the aforementioned portion of paragraph 4 of the grounds of impugned preventive detention order that the detaining authority has relied on the bail order of a Hon'ble Single Judge of this Court dated 23.08.2021 in CrI.O.P.No.9350 of 2021 (hereinafter '*Ranjith's case*' for convenience as Ranjith is the petitioner in this case) but what has been furnished to the detenu at pages 132 and 133 of the grounds booklet (Tamil translation at pages 134 and 135) is not the bail order but an order relaxing condition/s of bail. To be noted, copy of bail order has not been furnished to the detenu. Therefore, this clearly impairs the rights of the detenu to make an effective representation against the impugned preventive detention order and this further means that constitutional safeguard ingrained in Article 22(5) of the Constitution of India and recognised in Section 8(1) of Act 14 of 1982 has been subjected to infraction. This apart, there is yet another aspect of the matter. The relaxation (of bail conditions) order made in CrI.M.P.No.8148 of 2021 in CrI.O.P.No.9350 of 2021 is dated



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23.08.2021. A careful perusal of the relaxation order brings to light that bail has been granted by a Hon'ble Single Judge of this Court much earlier as one other condition had been relaxed on 19.05.2021 itself. This means that detaining authority has got the bail order date also wrong in *Ranjith's case*. In other words, the date of the bail order in *Ranjith's case* has been wrongly given as 23.08.2021 in the grounds of impugned preventive detention order. This shows non-application of mind qua detaining authority and it also baffles the detenu multiplying the infraction of Article 22(5) constitutional principle which is statutorily recognised vide Section 8(1) of Act 14 of 1982.

8. In response to the above argument, learned Prosecutor submitted to the contrary saying that the offences in *Ranjith's case* and the case on hand are comparable and what has happened is only a secretarial error.

9. We carefully considered the submissions made on both sides. On a demurrer, even if the argument that it is a secretarial error is accepted, the Prosecutor's endeavour to sustain the impugned preventive detention order still does not cut ice as the bail order has



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not been furnished to the detenu impairing the constitutional right (to make an effective representation against a preventive detention order) which has been statutorily recognised as alluded to supra. This means that the impugned preventive detention order is vitiated and the same deserves to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 19.05.2023 bearing reference C.O.C.No.40/2023 made by the second respondent is set aside and the detenu Thiru.Ilaiyaraja, aged 43 years, son of Thiru.Thulasi, 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.)
27.09.2023

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, Cuddalore.

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,

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Fort St.George, Chennai – 9.

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- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Thiruvarur District.
- 3.The Superintendent of Police,
O/o. The Superintendent of Police,
Thiruvarur District.
- 4.The Superintendent of Police,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Koradacherry Police Station,
Thiruvarur District.
- 6.The Public Prosecutor,
High Court, Madras.



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

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