



WEB COPY



H.C.P.No.1161 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

Coram

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

H.C.P.No.1161 of 2023

Eswari

W/o.Late. Selvaraj

.. Petitioner /mother of detenu

VS

1.State of Tamilnadu represented
by Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Police / Detaining Authority,
Tiruppur District.

3.The Superintendent of Prison,
Central Prison Coimbatore,
Coimbatore.

4.State Rep by Inspector of Police,
Veerapandi Police Station,
Tiruppur.

.. 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 of the 2nd
respondent pertaining to the order made in C.No.18/G/IS/Tiruppur City/2023



H.C.P.No.1161 of 2023

dated 17.04.2023 in detaining the detenu under the Tamilnadu Act 14/1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely Sankar, S/o.Late.Selvaraj aged about 24 years, who is detained at Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.Sanjay Davidson
for Mr.J.Franklin

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

ORDER

[Order of the Court was made by **R.SAKTHIVEL, J.**]

This 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] has been filed by mother of the detenu praying to set aside the impugned preventive detention order passed in C.No.18/G/IS/Tiruppur City/2023 dated 17.04.2023 by the second respondent and to produce the detenu, namely, Sankar, S/o.Late.Selvaraj, who is now confined in Central Prison, Coimbatore before this Court and set him at liberty.

2. When the captioned HCP came up for admission on 05.07.2023, this Bench made the following order:



WEB COPY



H.C.P.No.1161 of 2023



WEB COPY



H.C.P.No.1161 of 2023

H.C.P.No.1161 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 26.06.2023 *inter alia* assailing a detention order dated 17.04.2023 bearing reference C.No.18/G/IS/Tiruppur City/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.J.Franklin, learned counsel 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, 294(b), 324 and 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.197 of 2023 on the file of Veerapandi Police Station.



WEB COPY



H.C.P.No.1161 of 2023



WEB COPY



H.C.P.No.1161 of 2023

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, 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 there is non-application of mind on the part of the Detaining Authority in arriving at the subjective satisfaction that there is an imminent possibility of detenu being enlarged on bail even after the dismissal of the bail petition.

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.,]
05.07.2023

gpa



H.C.P.No.1161 of 2023

WEB COPY

3. There are four adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.197 of 2023 on the file of Veerapandi Police Station for alleged offences under Sections 341, 294(b), 324 and 307 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.Sanjay Davidson, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. Learned counsel for petitioner both in the Admission Board as well as in the final hearing Board predicated his campaign against the impugned preventive detention order on the point that the detaining authority has not applied his mind before passing the impugned preventive detention order. The detaining authority to arrive at subjective satisfaction that there is



H.C.P.No.1161 of 2023

imminent possibility of detenu being enlarged on bail, relied on the bail order passed by the learned Sessions Judge in Tiruppur (II Additional Sessions Judge, Tiruppur) in CrI.M.P.No.810 of 2021 dated 20.05.2021. Learned counsel drew our attention to paragraph 5(i) of the grounds of detention which reads as follows:

'(5). ...

(i) Because, I am aware that in a similar nature of the case, the accused Riyas, who was arrested in Tiruppur City, Tiruppur North Police Station Crime No.557/2021 under Section 294(b), 323, 324, 307, 506(ii) Indian Penal Code, the bail was granted by the Court of Vacation Judge, Tiruppur (II Additional Sessions Judge) (Full Additional Charge of I Additional Sessions Judge, Tiruppur) in Criminal Miscellaneous Petition Number 810/2021 dated 20.05.2021.'

Accordingly, learned counsel for petitioner prays to allow the petition.

6. Since the above said period covered Covid-19 pandemic period, learned Additional Public Prosecutor has no much of a say.

7. It is to be noted that Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 dated 10.01.2022 has exempted the period from



H.C.P.No.1161 of 2023

15.03.2020 to 28.02.2022. Due to then prevailing Covid-19 situation, the Court has released the prisoner on bail. Comparing the said bail order with the ground case is bad in law. Hence, subjective satisfaction arrived at by the detaining authority is a flawed exercise. Therefore, we are inclined to set aside the impugned preventive detention order.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 17.04.2023 bearing reference C.No.18/G/IS/Tiruppur City/2023 made by the second respondent is set aside and the detenu Thiru.Sankar, aged 24 years, son of Thiru.Selvaraj 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.)
14.09.2023

Index : Yes
Speaking order
Neutral Citation : Yes
rsi

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



WEB COPY



H.C.P.No.1161 of 2023

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

rsi

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George,
Chennai – 600 009.
- 2.The Commissioner of Police / Detaining Authority,
Tiruppur District.
- 3.The Superintendent of Prison,
Central Prison Coimbatore,
Coimbatore.
- 4.State Rep by Inspector of Police,
Veerapandi Police Station,
Tiruppur.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1161 of 2023

14.09.2023