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H.C.P.No.1170 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1170 of 2023

Malar
W/o.Raju

.. Petitioner

Vs.

State Rep. by

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Government of Tamil Nadu
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai.
3. The Superintendent
Central Prison-II
Puzhal, Chennai.
4. The Inspector of Police (L&O)
P-2, Otteri Police Station,
Chennai.

..Respondents

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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 records pertaining to the order of Detention dated 15.02.2023 passed by the 2nd Respondent in No.43/BCDFGISSSV/2023 and quash the same as illegal and direct the respondent to produce the Detenu Mr.Raju @ Arokkiyaraju S/o.Mahendran, male aged about 39 years now confined at Central Prison-II, Puzhal ,Chennai before this Hon'ble court and set him at liberty.

For Petitioner	:	Mr.S.Senthil Kumar
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 07.07.2023, this Court made the following order:

'H.C.P.No.1170 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

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



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Captioned Habeas Corpus Petition has been filed in this Court on 27.06.2023 inter alia assailing a 'detention order dated 15.02.2023 bearing reference No.43/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, fourth respondent is the Sponsoring Authority.

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

3. Mr.S.Senthilkumar, 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 341, 294(b), 323, 397, 506(ii) read with 34 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.724 of 2022 on the file of Otteri 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 family members of the



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detenu are not properly informed about the detention of the detenu.

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.'

2. The aforementioned Admission Board order captures 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.S.Senthil Kumar, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

4. As would be evident from paragraph No.5 of the Admission Board order, at the time of admission, learned counsel posited his challenge against the impugned preventive detention order on the point that family members of

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the detenu were not properly informed about the detention. However, today in the final hearing Board, learned counsel 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. In this regard, learned counsel drew our attention to a portion of paragraph No.4 of the grounds of impugned preventive detention order and the same reads as follows:

'4. I am aware that Thiru.Raju @ Arokkiyaraju is in remand in P-2 Otteri Police Station Crime Nos.337/2022, 422/2022, 625/2022, 627/2022 and 724/2022 and he has moved bail application for P-2 Otteri Police Station Crime No.627/2022 before the Court of learned Principal Sessions, Chennai in Crl.M.P.No.2696/2023 and the same was dismissed on 06.02.2023. He has not moved bail applications for P-2 Otteri Police Station Crime Nos.337/2022, 422/2022, 625/2022 and 724/2022. The Sponsoring Authority has stated that he came to understand that the relatives of Thiru.Raju @ Arokkiyaraju are taking steps to take him out on bail by filing another bail application in P-2 Otteri Police Station Crime No.627/2022 and P-2 Otteri Police Station Crime Nos.337/2022, 422/2022, 625/2022 and 724/2022 by filing bail application before the appropriate Court. In a similar case



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registered u/s.341, 294(b), 336, 392, 397, 506(ii) IPC in K7 ICF police station in Cr.No.05/2018, the bail was granted by the learned Court of Principal Sessions, Chennai in Crl.M.P.No.1863/2018. In a similar case registered u/s.341, 294(b), 323, 336, 427, 307, 506(ii) IPC in F2 Egmore Police Station Cr.No.145/2018, the bail was granted by the Court of learned Principal Sessions, Chennai in Crl.M.P.No.6184/2018. Hence, I infer that there is a real possibility of his coming out on bail by filing another bail application in P-2 Otteri Police Station Crime No.627/2022 and P-2 Otteri Police Station Crime Nos.337/2022, 422/2022, 625/2022 and 724/2022 by filing bail application before the appropriate Court since in similar case bail is granted by the Court after a lapse of time.....'

5. Adverting to the aforementioned portion of paragraph No.4 of the grounds of impugned preventive detention order, learned counsel submitted that even according to the Detaining Authority though four adverse cases and one ground case constitute the substratum of the impugned preventive detention order, the detenu has moved for bail in only fourth adverse case (Crime No.627 of 2022 on the file of P-2 Otteri Police Station) and that bail petition also was dismissed on 06.02.2023. It is the further submission of learned counsel that even according to the impugned preventive detention,



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the detenu has not moved bail in three other adverse cases and ground case but the Detaining Authority has come to the conclusion that the detenu is likely to come out on bail as bail has been granted in a similar case. It may not be necessary to go into the question as to whether similar case is dissimilar as the point turns on a different aspect of the matter. The point is, when the detenu has not moved bail in three out of four adverse cases and ground case and Detaining Authority has also noticed that detenu 's lone bail petition in the fourth adverse case has been dismissed but subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail has been arrived at by the Detaining authority and therefore, the subjective satisfaction is flawed and this flaw is apparent and clear as daylight.

6. Responding to the aforementioned argument of learned counsel for petitioner, learned Prosecutor advertent to grounds booklet submitted that there is a special report from Sponsoring authority and there is also a statement under Section 161 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] from one of the



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relatives of the detenu.

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7. We carefully considered the rival submissions. We find that the point urged by the learned counsel for the petitioner enures to the benefit of detenu as there is no mention about the special report or Section 161 Cr.PC statement in the impugned preventive detention order. Absent reference to the special report as well as 161 Cr.PC statement in the impugned preventive detention order makes it indisputable that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of the detenu being enlarged on bail is *de hors* the same and therefore, remains impaired. This vitiates the impugned preventive detention order and the same deserves to be dislodged.

8. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

9. Apropos, the further sequitur is, captioned HCP is allowed.



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Impugned preventive detention order dated 15.02.2023 bearing reference No.43/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Raju @ Arokkiyaraju, male, aged 39 years, son of Thiru.Mahendran, 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.)

07.08.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

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

To

1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Government of Tamil Nadu
Fort St.George, Chennai-600 009.
2. The Commissioner of Police
Greater Chennai.
3. The Superintendent
Central Prison-II
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5.

The Public Prosecutor
High Court, Madras.



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

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