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H.C.P.No.1211 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.1211 of 2023

Lakshmi

.. Petitioner

VS

1. State of Tamil Nadu Rep. By
The Secretary to Government,
Department of Home, Prohibition and Excise
Secretariat, Fort St. George
Chennai

2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai - 7

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

4.The Inspector of Police,
K-1, Sembium Police Station
Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India praying
for issuance of a writ of habeas corpus calling for the records in Memo



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No.112/BCDFGISSSV/2023 passed by the second respondent on 19.04.2023 on the file of the 2nd respondent and quash the same as illegal and consequently direct the respondent to produce my son Ganesan, son of Srinivasan, aged about 23 years before this Court, who is now detained in Central Prison, Puzhal-II and set him at liberty.

For Petitioner : Mr.S.Shanmugam
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.]

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 12.07.2023, this Court made the following order:

"H.C.P.No.1211 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 04.07.2023 inter alia assailing a 'detention order dated 19.04.2023 bearing reference No. 112/BCDFGISSSV/2023' [hereinafter '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, fourth respondent is the Sponsoring Authority.

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

3. Mr.A.Elumalai, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for an alleged offence under Section 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] in Crime No.102 of 2023 on the file of K-1, Sembium 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 accident register was not properly translated in Tamil, 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.'



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2. The aforementioned Admission Board order dated 12.07.2023 captures all essentials i.e., facts that are imperative for appreciating this order and therefore, we are not setting out the same again in this final order. Suffice to say that aforementioned 12.07.2023 Admission Board order shall now be read as an integral part and parcel of this final order. This also means that the short forms, short references and abbreviations used in the Admission Board order dated 12.07.2023 will continue to be used in the instant final order also.

3. Mr.S.Shanmugam, 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.

4. As would be evident from paragraph 5 of the Admission Board order, petitioner's campaign against the impugned preventive detention order is predicated on the ground that accident register was not properly translated in Tamil, which prevented the detenu from making an effective representation but in the final hearing today. learned counsel for petitioner changed his line of attack qua impugned preventive detention order on subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of the detenu being enlarged on bail. Learned



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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 CrI.M.P.No.10485 of 2021 on the file of Sessions Court, Chennai. Relevant portion in paragraph No.3 of the grounds of detention reads as follows:

'3.....In a similar case, registered u/s 147, 148, 449, 324, 302 IPC in R3 Ashok Nagar Police Station in Cr.No.59/2021, the bail was granted by the Principal Sessions Court, Chennai in CrI.M.P.No.10485/2021. Hence, I infer that there is a real possibility of his coming out by filing bail application in K-1 Sembium Police Station Crime No.102/2023 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 thereat 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.'



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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.

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 19.04.2023. 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, is impaired leading to the inevitable sequitur that impugned preventive detention order is vitiated and that it deserves to be dislodged.



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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 19.04.2023 bearing reference No.112/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Ganesan, aged 23 years, Son of Thiru.Srinivasan, 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
gpa

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai - 66.



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To

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Department of Home, Prohibition and Excise
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Chennai
- 2.The Commissioner of Police
Greater Chennai
Office of the Commissioner of Police
Vepery, Chennai - 7
- 3.The Superintendent of Prison,
Central Prison, Puzhal II
Puzhal, Chennai
- 4.The Inspector of Police,
K-1, Sembium Police Station
Chennai
- 5.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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