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H.C.P.No.1258 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.1258 of 2023

Gnanasekar

.. Petitioner /
Father of the detenu

Vs.

1. The State represented by
The Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamilnadu
Fort St.George
Chenani – 600 009
2. The District Collector and District Magistrate
Villupuram District
Villupuram
3. The Superintendent of Police
Villupuram District
Villupuram
4. The Superintendent of Prison
Central Prison
Cuddalore

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5. The Inspector of Police
Villupuram West Police Station
Villupuram 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 pertaining to the order of detention dated 06.04.2023 passed by the 2nd respondent in Rc.No.C2/25583/2023 and quash the same and produce the detenu Mr.Vallarasu, S/o.Gnanasekar, aged about 23 years before this Court and set him at liberty, now the detenu is confined at Central Prison, Cuddalore.

For Petitioner	:	Mr.S.Senthilvel for Mr.D.Ashok Kumar
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor Assisted by Mr.Aravind.C

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

This order will now dispose of the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity).

2. Captioned HCP was listed for admission on 17.07.2023 and this Bench made the following order:

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

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

Captioned Habeas Corpus Petition has been filed in this Court on 06.07.2023 inter alia assailing a 'detention order dated 06.04.2023 bearing reference Rc.No.C2/25583/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] 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, father of detenu is the petitioner.

3. Mr.D.Ashok Kumar, 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 294(b), 324 and 302 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] and subsequently, altered into Sections 294(b), 324, 506(ii) and 320 of IPC in Crime No.77 of 2023 on the file of Villupuram West 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



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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 furnished in the grounds booklet 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 Admission Board order dated 17.07.2023 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 17.07.2023 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 17.07.2023 will continue to be used in the instant final order also.

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



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5. 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 the subjective satisfaction arrived at by the Detaining Authority with regard to imminent possibility of detenu being enlarged on bail is flawed as the similar case relied upon is really not similar.

6. Elaborating on the aforementioned point, Mr.Senthilvel, learned counsel drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order, which reads as follows:

'5.....But, the Sponsoring Authority received reliable information that his relatives are taking steps to file bail application. Hence, there is real possibility of his coming out on bail by filing a bail application in the appropriate court for the above case. Since in similar cases bails are granted by the Courts. For example in a similar case, bail was granted to Thiru.R.Arunbabu, in CrI.A (MD) No.228/2018 dated 03.05.2018 by the Hon'ble Madras High Court Madurai Bench, for Thirunelveli Medical College Police Station Crime No.30/2018, u/s.147, 148, 447, 294(b), 324, 302 and 506(ii) IPC and 120(B) of IPC and Sec. 3, 4(a) of Explosive Substances Act, 1908 r/w. section 3(1)(r), 3(1)(s) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Section 3(2)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of



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Atrocities) Act, 1989.....'

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7. Adverting to the aforementioned portion, learned counsel submitted that Thiru.Arunbabu's case is under 'The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989)' [hereinafter 'SC/ST (PoA) Act' for the sake of brevity] wherein the principles are vastly different from the ground case which is Section 302 simplicitor. Therefore the comparison of two is bad is learned counsel's say. It was also pointed out that the Detaining Authority has relied on the statement of the Sponsoring Authority that Sponsoring Authority has received reliable information that relatives of detenu are taking steps to file bail application but there is neither a Section 161(3) Cr.P.C statement nor a Special Report from the Sponsoring Authority.

8. In response to the above argument, learned Prosecutor submitted that *Arunbabu's* case is technically more difficult when it comes to grant of bail.

9. We carefully considered the rival submissions.

10. The comparison with similar case should meet the Rekha's case ***[Rekha Vs. State of Tamil Nadu through Secretary to Government and another reported in (2011) 5 SCC 244]*** principle. In other words, two cases



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should be comparable and the parameters should be comparable. Absent such common parameters, it will become a case of age old adages a) comparison of 'Apples and Oranges' and b) comparison of 'Cheese and Chalk'.

11. As regards the statement of the Sponsoring Authority as rightly pointed out by learned counsel for HCP petitioner, it is neither supported by Section 161(3) Cr.P.C statement from the relatives nor is there a Special Report . To be noted, we had the benefit of perusing the grounds booklet.

12. In the light of the narrative thus far, the points projected by learned counsel for petitioner are sustained and we hold that the impugned preventive detention order deserves to be dislodged in the habeas legal drill on hand.

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 06.04.2023 bearing reference Rc.No.C2/25583/2023 made by the second respondent is set aside and the detenu Thiru.Vallarasu, male, aged 23 years, son of Thiru.Gnanasekar, is



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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 : No/Yes
Speaking/Non-speaking
Neutral Citation : No/Yes

gpa

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



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- To
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 2. The District Collector and District Magistrate
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 4. The Superintendent of Prison
Central Prison
Cuddalore
 5. The Inspector of Police
Villupuram West Police Station
Villupuram District
 6. The Public Prosecutor,
High Court, Madras.



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

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