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H.C.P.No.1681 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1681 of 2022

Nisha

W/o.Maheswaran

.. Petitioner/
wife of the Detenu

Vs.

1. State Rep by
The Additional Chief Secretary to Government,
Home, Prohibition & Exercise Department,
Fort St. George, Chennai – 600 009.
2. District Collector & District Magistrate,
Thiruvarur District,
Thiruvarur.
3. The Superintendent of Police,
Thiruvarur District,
Thiruvarur.
4. The Superintendent of Prison,
Central Prison,
Thiruchirappalli.



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5. The Inspector of Police,
Thiruthuraipoondi Circle,
Thiruvarur.

... 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 in C.O.C.No.15/22 dated 23.06.2022 passed by the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce the petitioner's husband detenu namely Maheswaran, son of Subramani, aged about 26 years, who is now confined at Central Prison, Thiruchirappalli and set him at liberty.

For Petitioner : Mr.J.Milton Arul Rajendran

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John

ORDER

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

This order will now dispose of the captioned matter.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 27.02.2023, which reads as follows:

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'In the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity], a 'detention order dated 23.06.2022 bearing reference C.O.C.No.15/2022' [hereinafter 'impugned detention order' for the sake of brevity, convenience and clarity] made by the jurisdictional District Collector, i.e., second respondent [hereinafter 'Detaining Authority' for the sake of convenience] has been called in question by the wife of the detenu.

2.In and by the impugned detention order, preventive detention has been clamped qua detenu on the premise that the detenu is a 'Drug Offender' within the meaning of section 2(e) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drugoffenders, Forest-offenders, Goondas, Immoral traffic offenders, Sandoffenders, 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].

3.We are informed that the date of arrest in the ground case is 01.05.2022. Mr.J.Milton Arul Rajendran, learned counsel for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John are before us.

4.Before we plunge into the legal drill of testing the impugned detention order, it is necessary to capture (in this proceedings) what transpired in the hearing today.

5.As learned counsel for petitioner in his campaign against impugned detention order attempted to assail the subjective satisfaction of detaining authority qua imminent possibility of the



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detenu being enlarged on bail, the question as to whether any bail petition has been filed came up. Learned Prosecutor, on instructions from the Sub Inspector of Police, Thiruthuraipoondi Circle, Thiruvarur (5th respondent Police Station herein) submitted that charge sheet in the ground case has been filed within the stipulated time frame but it came to light that the petitioner appears to have filed an application for default bail vide CrI.M.P.No.5558 of 2022 on the file of I Additional District and Sessions Judge, Thanjavur and the same has been allowed on 31.10.2022. To be noted, default bail plea is under section 167(2) of 'The Code of Criminal Procedure, 1973' [hereinafter 'Cr.P.C.' for the sake of convenience].

6.Faced with the above situation, learned Prosecutor requested for time to ascertain the correct position and revert to us.

7.Let the Investigating Officer remain present before us in the next listing. List on 01.03.2023.'

3. The aforementioned proceedings have to be read as an integral part and parcel of this order. Therefore the short forms and abbreviations used in the earlier proceedings will continue to be used in the instant order also.

4. Adverting to earlier proceedings both sides have placed before us an order dated 31.10.2022 made by the trial Court in CrI.M.P.No.5558 of 2022 in Crime No.203 of 2022, wherein default bail under Section 167(2) of



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'Criminal Procedure Code, 1973' [hereinafter 'Cr.P.C.' for brevity] has been granted.

5. Learned Additional Public Prosecutor is instructed by Mr.M.Kazhaniyappan, Inspector of Police in Thiruthuraipoondi Police Station, Thiruvarur District. Therefore the Investigating Officer is before us (pursuant to paragraph 7 of the previous proceedings). The Investigating Officer expresses regret for the incorrect instructions given to the prosecutor in the previous listing. The submission is recorded.

6. Reverting to the impugned detention order, learned counsel for petitioner submitted that page 23 of grounds booklet is not legible. We had the benefit of perusing the same. We are unable to agree with the learned counsel for petitioner. The second point raised by the learned counsel is, there are no signatures of the witnesses in pages 17 and 18 of the booklet. We perused the booklet. We find that pages 17 and 18 are statements under Section 161(3) of 'Cr.P.C.' of witnesses qua confession and seizure mahazar. This argument does not hold water as we find that in the confession



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statement and seizure mahazar a person confessing and the witnesses, respectively have signed and the same have also been given to the detenu in the booklet at pages 13 and 15. Therefore the second point also does not find favour with us.

7. The third point urged by learned counsel for petitioner turns on imminent possibility of detenu being enlarged on bail. Adverting to the impugned detention order, learned counsel submitted that the detenu has not moved any bail but the detaining authority has arrived at subjective satisfaction that there is imminent possibility of detenu being enlarged on bail on the ground that the detenu's father one Thiru.Subramani is taking steps.

8. In response to aforesaid argument, learned Additional Public Prosecutor drew our attention to page 44 of the booklet and submitted that there is a statement from father of the detenu saying that he is taking steps through his advocate to seek bail. We find that this statement stands buttressed as thereafter a default bail application has been moved and bail



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has infact been granted as already alluded to *supra*. Likewise we are also unable to persuade ourselves to believe that the subjective satisfaction arrived at by the detaining authority is impaired owing to not being based on material as it is based on statement given by the detenu's father that he is taking steps to move bail for the detenu which is buttressed by the fact that he has infact done it and obtained default bail.

9. As all the points canvassed by the learned counsel for petitioner do not find favour with us. The captioned HCP fails and the same is dismissed.

(M.S.,J.)

(M.N.K.,J.)

01.03.2023

Index : Yes

Speaking

Neutral Citation : Yes

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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

rsi

To

1. The Additional Chief Secretary to Government,
Home, Prohibition & Exercise Department,
Fort St. George, Chennai – 600 009.
2. District Collector & District Magistrate,
Thiruvarur District,
Thiruvarur.
3. The Superintendent of Police,
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5. The Inspector of Police,
Thiruthuraipoondi Circle,
Thiruvarur.
6. The Public Prosecutor,
High Court, Madras.

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