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H.C.P.No.1367 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.1367 of 2023

Yogeswari

.. Petitioner

VS

1.The State of Tamil Nadu
Rep.by the Chief Secretary
Department of Home, Prohibition and Excise
Secretariat, Fort St.George
Chennai – 600009

2.The Commissioner of Police,
Office of the Commissioner of Police
Veppery
Chennai – 600 007

3.The Superintendent of Prison
Central Prison, Puzhal
Chennai

4.The Inspector of Police
Prohibition Enforcement Wing
Triplicane Unit
Chennai

.. Respondents



H.C.P.No.1367 of 2023

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for records of the second respondent in detention order in No.131/BCDFGISSSV/2023 dated 25.04.2023 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same as illegal and unconstitutional and also direct the respondents to produce the petitioner's husband Pradeep Kumar, son of Dhanasekar, aged 29 years, now confined at Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Ms.Harsha Vardhini
for Mr.B.Thiagarajan

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.]

When the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity) was listed in the Admission Board on 06.07.2023, this Court made the following order:

"H.C.P.No.1367 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 12.07.2023 inter alia assailing a 'detention order dated 25.04.2023 bearing reference No.131/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 convenience]. To be noted, fourth respondent is the Sponsoring Authority.

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

3. Mr.G.Mohana Krishnan, learned 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 8(c) read with 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances, Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity] in Crime No.81 of 2023 on the file of Prohibition Enforcement Wing, Triplicane Unit.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Drug Offender' under Section 2(e) 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 some of the documents in the grounds booklet furnished to the detenu are illegible which prevented the detenu from making an effective representation.



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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 dated 06.07.2023 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 06.07.2023 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 06.07.2023 will continue to be used in the instant final order also.

3. Ms.Harsha Vardhini, learned counsel representing the 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, at the time of admission learned counsel for petitioner projected his



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argument on the ground that some of the documents in the grounds booklet furnished to the detenu were illegible which prevented the detenu from making an effective representation but in the final hearing today, learned counsel for petitioner changed her line of attack and submitted that subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired/flawed.

5. Elaborating on the aforesaid submission, learned counsel submitted that the detaining authority vide grounds of impugned preventive detention order has relied on a 'bail order dated 31.08.2018 made in CrI.M.P.No.662 of 2018 on the file of Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai' (hereinafter '*Velazhaki's case*' for the sake of convenience and clarity). Learned counsel submitted that *Velazhaki's case* bail order has been furnished to the detenu in the grounds booklet and the same is at pages 95 to 97. This Bench had the benefit of perusing *Velazhaki's case* bail order. Learned counsel drew our attention to a very crucial paragraph in *Velazhaki's case* bail order and the same reads as follows:

'The learned Special Public Prosecutor made an endorsement in the bail petition stating that the petitioner may be released on bail on any condition.'



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6. Learned counsel submitted that comparing *Velazhaki's case* bail order describing the same as similar and arriving at aforementioned subjective satisfaction is clearly flawed.

7. In response to the above argument, learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that the alleged offence/charge qua *Velazhaki's case* and the ground case are largely similar and comparable.

8. We carefully considered the rival submissions.

9. We have no difficulty in accepting the argument of learned counsel for petitioner that the aforementioned subjective satisfaction arrived at by the detaining authority is flawed as comparing the ground case with another bail order is not limited to comparing alleged offences/charges but the determinants/parameters for bail also need to be compared. In the case on hand, it is seen that in *Velazhaki's case* bail order, learned Prosecutor has made an endorsement in the bail petition that the petitioner may be released on bail on any condition. Therefore, comparing *Velazhaki's case* with the ground case and saying that there is imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. Owing to this flaw, the impugned preventive detention order deserves to be dislodged.



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10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 25.04.2023 bearing reference 131/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Pradeep Kumar, aged 29 years, son of Thiru.Dhanasekar, 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

Neutral Citation : Yes

Speaking order

gpa

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



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To

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Department of Home, Prohibition and Excise
Secretariat, Fort St.George
Chennai – 600009
- 2.The Commissioner of Police,
Office of the Commissioner of Police
Veppery
Chennai – 600 007
- 3.The Superintendent of Prison
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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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