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H.C.P.No.1530 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.1530 of 2023

Ramani

.. Petitioner

Vs

- 1.The State of Tamil Nadu rep. By its
Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.
- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai – 7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police (L & O),
V7, Nolambur Police Station,
Chennai – 95.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call upon the production of records relating to the detention order dated 25.03.2023 made in detention order Memo No.75/BCDFGISSSV/2023 passed by the second respondent herein and quash the same and direct the

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respondents to produce the body or person of detenu Mithunraj, S/o.Ramani, male, Hindu, aged 28 years, branded as Goonda and now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Mohamed Saifulla
for Mr.M.Dhivakar

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by father of detenu assailing a 'preventive detention order dated 25.03.2023 bearing reference No.75/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by 'second respondent' (hereinafter 'detaining authority' for the sake of convenience). To be noted, fourth respondent is the sponsoring authority.

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas,



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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] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are three adverse cases. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.53 of 2023 on the file of V-7 Nolambur Police Station for alleged offences under Sections 341, 294(b), 336, 427, 397, 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

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



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5. In the support affidavit qua captioned HCP, though several points have been raised/urged, Mr.M.Mohamed Saifulla, learned counsel representing the counsel on record for HCP petitioner posited his argument on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is flawed. In support of this argument, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order which reads as follows:

'4.....Further, it is pertinent to note that in a similar case registered at G-3 Kilpauk Police Station in Crime No.275/2019 under Sections 341, 294(b), 323, 336, 397, 427 and 506(ii) of IPC, bail was granted to the some other accused by the court of learned Principal Sessions at Chennai in CrI.M.P.No.21605/2019. Hence, I infer that there is a real possibility of his coming out on bail by filing bail application for V-7 Nolambur Police Station Crime Nos.49/2023 and 53/2023 before the appropriate court, since, in similarly placed cases, bail was granted by the courts, after a lapse of time...'

6. Adverting to the aforementioned portion, learned counsel submitted that the 'bail order in CrI.M.P.No.21605 of 2019 in Crime No.275 of 2019 dated 18.10.2019 on the file of Sessions Court,



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Chennai' (hereinafter '*Arun's case*' as Arun @ Arnkumar is petitioner) is one where (a) petitioner had no bad antecedents and (b) learned Prosecutor does not raise any serious objection.

7. Learned counsel submitted that owing to the aforementioned point, comparison of the case on hand and one of the adverse cases thereat with *Arun's case* for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail is flawed.

8. In response to the above argument, learned Prosecutor submitted that the alleged offences in *Arun's case* and the third adverse case with which *Arun's case* has been compared by the detaining authority are broadly comparable.

9. We carefully considered the rival submissions.

10. This Court has repeatedly held that as regards subjective satisfaction to be arrived at by the detaining authority by comparing the case on hand with the similar case bail order it is not merely a case of comparison of offences but it is also a case where



determinants/parameters also should be comparable. In this view of the matter we had the benefit of perusing the grounds booklet. We find that paragraphs 4 and 5 of *Arun's case* bail order read as follows:

'4. On the other hand, learned CPP submits that this petitioner along with other accused robbed Rs.2000/- from the defacto complainant at knife point. However, according to her, the petitioner has no bad antecedents.

5. Learned CPP does not raise any serious objection. No previous case is reported as against the petitioner. The petitioner has been in custody for the past 43 days. Considering the above aspects, this court is inclined to grant bail to the petitioner subject to the condition.' (underlining made by us for ease of reference and for supplying emphasis).

11. Owing to the aforementioned determinants/parameters in *Arun's case* we find that it is not comparable with the third adverse case as even according to the impugned preventive detention order there are three adverse cases qua detenu and in any event a case where the Prosecutor has not raised any serious objection for enlarging the petitioner on bail cannot be used as a bench mark for comparison and arriving at subjective satisfaction qua imminent



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possibility of detenu being enlarged on bail. This means that the impugned preventive detention order is vitiated and the same becomes liable for being dislodged in the habeas legal drill on hand.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 25.03.2023 bearing reference No.75/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Mithunraj, aged 28 years, Son of Thiru.Ramani, 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.)
15.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

To

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 9.

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- 2.The Commissioner of Police,
Greater Chennai,
Office of Commissioner of Police,
Vepery, Chennai – 7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai – 66.
- 4.The Inspector of Police (L & O),
V7, Nolambur Police Station,
Chennai – 95.
- 5.The Public Prosecutor,
High Court, Madras.



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

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