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H.C.P.No.2397 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2397 of 2022

S.Bhavani

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 09.

2.The District Magistrate and District Collector,
Tiruppur, Tiruppur District.

3.The Superintendent of Prison,
Central Prison,
Coimbatore District.

4.The Superintendent of Police,
Tiruppur, Tiruppur District.

5.The Inspector of Police,
Prohibition Enforcement Wing,
Tarapuram, Tiruppur District.

.. Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records of the detention order dated 21.10.2022 in Cr.M.P.No.75/Bootlegger/2022 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the husband of the petitioner Thiru.Santhosh @ Sankar @ Sankarboy S/o.Chandrasekar aged about 27 years, now confined at Central Prison, Coimbatore and set the detenu at liberty forthwith.

For Petitioner : Mr.S.Madhusudanan

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.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by wife of detenu assailing a 'preventive detention order dated 21.10.2022 bearing reference Cr.M.P.No.75/Bootlegger/2022' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

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2. Impugned detention order has been made under '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] on the premise that the detenu is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There is no adverse case. The ground case which is the sole substratum of the impugned detention order is Crime No.384/2022 on the file of Dharapuram Prohibition Enforcement Wing for alleged offences under Sections 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act, 1937 [Transport] and Rules 5, 6 and 7 of Tamil Nadu Rectified Spirit Rules, 2000. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix or be detained further by facts.



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4.Mr.S.Madhursudanan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for all respondents are before us.

5.In the support affidavit qua captioned HCP several points/grounds have been urged/raised but in the final hearing subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed leaving the impugned preventive detention order vitiated is the lone point that was exhorted. Discussion and dispositive reasoning on this point is set out infra in the paragraphs to follow in this order.

6.Paragraph 5 of the impugned preventive detention order reads as follows:

'5.I am aware that **Santhosh @ Sankar @ Sankarboy** is in remand in Central Prison, Coimbatore in connection with Dharapuram Prohibition Enforcement Wing Cr.No.921/2022 u/s.4(1)(aaa), 4(1-A) Tamil Nadu



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Prohibition Act, 1937 (Transport) and Rules 5, 6 and 7 of Tamil Nadu Rectified Spirit Rules, 2000. In connection with Dharapuram Prohibition Enforcement Wing Cr.No.921/2022 u/s.4(a)(aaa), 4(1-A) Tamil Nadu Prohibition Act, 1937 (Transport) and Rules 5, 6 and 7 of Tamil Nadu Rectified Spirit Rules, 2000, accused **Santhosh @ Sankar @ Sankarboy** filed bail petition before the Court of Hon'ble District and Sessions Judge, Tiruppur vide CrI.M.P.No.1925/2022 and the same was dismissed on 13.10.2022. He again moved and filed a bail petition CrI.O.P.No.25556/2022 in the Hon'ble High Court of Madras and upon hearing on 19.10.2022 the bail petition was dismissed. On the materials placed before me, I am fully satisfied that **Santhosh @ Sankar @ Sankarboy** is a **“Bootlegger”** and there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of Public Order and Public Health under the provisions of the Tamil Nadu Act 14 of 1982 and as per the power delegated to me in G.O.(D).No.326, Home, Prohibition and Excise (XVI) Department dated 13.10.2022.'



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7.The order dated 13.10.2022 in CrI.M.P.No.1925/2022 on the file of Principal Sessions Court, Tiruppur dismissing the bail petition of the detenu is at pages 113 to 115 of the grounds booklet. Likewise, order made by a Hon'ble Single Judge in this Court being order dated 19.10.2022 in CrI.O.P.No.25556 of 2022 is at pages 124 to 128. Both these orders make it clear that successive bail petitions moved by the detenu have been dismissed by the learned Principal Sessions Judge and Hon'ble Single Judge of this Court in that order. Thereafter, there is nothing in the impugned preventive detention order to say that any further steps have been taken. Therefore, it is clear that two successive attempts of the detenu to secure bail were in vain as both efforts resulted in negative orders i.e., dismissal of bail petitions. This means that there is little possibility much less imminent possibility of the detenu being enlarged on bail. To be noted, the detenu is petitioner No.8 in both these bail orders. When two successive bail petitions have been dismissed, all that one can infer is, the possibility of the detenu being enlarged on bail is dim and distant. In this view of the matter, we are of the view that the impugned preventive detention order suffers



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from the vice of not arriving at subjective satisfaction logically qua imminent possibility of detenu being enlarged on bail.

8.Learned Prosecutor submitted to the contrary and argued that the dismissal of the two bail orders have been captured by the detaining authority in the impugned preventive detention order but in our considered view this argument tantamounts to begging the question as the question is whether there is imminent possibility of detenu being enlarged on bail. We have repeatedly held that imminent possibility is not qua time but qua probability. Therefore, we have no difficulty in saying that the impugned preventive detention order is vitiated qua subjective satisfaction as regards imminent possibility of detenu being enlarged on bail and the sequitur is, impugned preventive detention order deserves to be dislodged

9.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 21.10.2022 bearing reference Cr.M.P.No.75/Bootlegger/2022 made by the second respondent is set aside and the detenu Thiru.Santhosh @ Sankar @ Sankarboy, male, aged 27



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years, son of Thiru.Chandrasekar 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.)

(M.N.K.,J.)

26.04.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

cse

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



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To

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- 6.The Public Prosecutor
High Court, Madras.



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and
M.NIRMAL KUMAR, J.,

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