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H.C.P.No.2343 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM

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

**H.C.P.No.2343 of 2022**

Baiju Kumar Mahto

.. Petitioner

Vs

- 1.State of Tamil Nadu rep. By  
The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,  
Coimbatore City, Coimbatore.
- 3.The Superintendent of Prison,  
Central Prison, Coimbatore.
- 4.The Inspector of Police,  
E2 Peelamedu Police Station,  
Coimbatore City.

.. 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 passed by the second respondent vide his proceedings in C.No.64/G/IS/2022 dated 17.10.2022 against the petitioner's son the detenu Ganga prasad, aged 28 years, son of



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Baiju Kumar Mahto, now confined in Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.Balaji  
for Mr.T.Muruganantham

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 father of the detenu assailing a 'preventive detention order dated 17.10.2022 bearing reference C.No.64/G/IS/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned detention order has been made by second respondent.

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

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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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3. The ground case which is the sole substratum of the impugned detention order is Crime No.863 of 2022 on the file of E-2 Peelamedu Police Station for alleged offences under Section 8(c) r/w 20(b)(ii)(C) and 25 of 'Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. 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.

4. Mr.T.Balaji, learned counsel representing Mr.T.Muruganantham, 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 captioned HCP, very many grounds have been urged in



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the support affidavit but learned counsel for petitioner projected his argument or in other words predicated his campaign against the impugned preventive detention order on one point and that one point turns on subjective satisfaction of the detaining authority being impaired qua imminent possibility of the detenu being enlarged on bail.

6. Elaborating on this argument, learned counsel drew our attention to paragraph 6 of the impugned preventive detention order and the most relevant portion reads as follows:

*'6.....Further in a case registered under similar sections of law (Coimbatore NIB CID Crime No.129/2016 u/s 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act 1985), bail was granted to the accused Raja @ Rajendran by the Hon'ble Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore in C.M.P. No.902/2016 dated 20.09.2016....'*

7. We had the benefit of perusing the bail order of the Trial Court in Crime No.129 of 2016 wherein the bail petitioner is one Raja @ Rajendran. This order is at page 130 of the booklet and a scanned reproduction of the same is as follows:



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130  
C.A.M.No.2343/2022

Order dated 22/09/2022  
NOMC-12, Coimbatore.

Accused: Raja G Rajendran (A)  
vs. Late Polinisan, y

Quoted: 22/09/2022

Heard both sides. Records perused. Order pronounced. The investigation must have been completed by this time and chemical analysis report only is awaited. Hence this court is inclined to release the petitioned accused on bail. Accordingly, the petitioner/accused is ordered to be released on bail on the executing a bond for Rs.10,000/- with two blood related persons each for the likeness to the jurisdiction of this court and on condition that he should appear and sign before the Resident Magistrate's Court daily between 10.00am, 2.00pm and 5.00pm until further orders and the petitioner/accused should not abscond and also he should not supply any information with respect to the whereabouts of the accused.

  
JUDGE, DIST. & SESSIONS JUDGE  
PRESIDING OFFICER  
SPL. COURT FOR  
B.C. ACT CASES, COIMBATORE

  
District & Sessions Judge  
Coimbatore  
22/09/2022 (P & G) and signed  
Dated 22/09/2022





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8. We also had the benefit of perusing the bail application in Raja @ Rajendran case which is at page 128 and a scanned reproduction of the same is as follows:

IN THE COURT OF THE ESSENTIAL COMMODITIES AND SPECIAL JUDGE OF COIMBATORE

CMF No. 902/ of 2016  
Cr.No. 125 of 2016

Raja @ Rajendran (13)  
S/o Late Palanisamy

..... Petitioner/Accused

..... Respondent/Complainant

State by Inspector of Police  
NIB CID,  
Coimbatore

**BAIL APPLICATION FILED UNDER SECTION 439 OF C.P.C. AND 32 GENOPS ACT**

It is respectfully submitted that the petitioner/accused was arrested on 05.08.2016 and remanded to judicial custody on the same day for an alleged offence under Section 3(a) r/w 23(1) (i) (ii) of NDPS Act with possession of 3.000 Kgs of Ganja. He is in judicial custody for the past more than 45 days.

1. The petitioner/accused is innocent. He has not committed any offence. He has been falsely implicated in this case.
2. He is having permanent residence. He will not abscond.
3. It is respectfully submitted that on 05.08.2016, the respondent police picked up the petitioner/accused and his wife from their house. Under the guise of an inquiry, took them to the office of the NIB CID Coimbatore and foisted a false case against them with ulterior motive.
4. He is ready to produce substantial surety for his due appearance.
5. His bail application is filed and pending before the Hon'ble High Court of Judicature at Madras.

It is therefore respectfully prayed that this Hon'ble Court may be pleased to enlarge the petitioner/accused on bail and thus render justice.

Advocate for Petitioner/Accused

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**சுயமேயம் சிவசுந்தரம்**  
சுயமேயம் சிவசுந்தரம்  
E2 பீரமேயம் சிவசுந்தரம்  
சுயமேயம் சிவசுந்தரம்



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9. Adverting to the aforementioned bail order and bail petition, learned counsel submitted that the alleged offence in Raja @ Rajendran case is under Section 8(c) r/w 20(b)(ii)(B) whereas the ground case i.e., Crime No.863 of 2022 on the file of E2 Peelamedu Police Station, Coimbatore City is under Section 8(c) r/w 20(b)(ii)(C). Learned counsel submits that therefore the ground case is a commercial quantity matter whereas Raja @ Rajendran case is intermediate quantity matter. We also find from the bail petition that in the case of Raja @ Rajendran, the allegation pertains to 3 kg of Ganja whereas in the ground case it is a commercial quantity which is well above 20 kgs vide the Table to NDPS Act. To be noted all the provisions of law referred to pertain to NDPS Act.

10. Learned Additional Public Prosecutor submits that the substance is the same and therefore the detaining authority has arrived at subjective satisfaction by placing reliance on Raja @ Rajendran case.



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11. We carefully considered the rival submissions but we are unable to sustain the submission of the Prosecutor inter alia owing to Section 37 (1)(b) of NDPS Act wherein there is a specific bar qua grant of bail with regard to commercial quantity. This means that comparing Raja @ Rajendran case which is intermediate quantity within the meaning of Section 20(b)(ii)(B) with the ground case which is a commercial quantity under Section 20(b)(ii)(C) is clearly a case of comparing apples and oranges. As the comparison is bad the sequitur is subjective satisfaction arrived at by the detaining authority qua imminent possibility of the detenu being enlarged on bail is impaired. As the subjective satisfaction is impaired, further sequitur is, the impugned preventive detention order deserves to be dislodged.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.10.2022 bearing reference C.No.64/G/IS/2022 made by the second respondent is set aside and the detenu Thiru.B.Ganga Prasad, aged 28 years, son of Thiru.Baiju Kumar Mahto, is directed to be set at liberty forthwith, if not required

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in connection with any other case / cases. There shall be no order as to costs.

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(M.S.,J.) (R.S.V.,J.)  
02.06.2023

Index : Yes  
Neutral Citation : Yes  
mmi

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

To

- 1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai – 9.
- 2.The Commissioner of Police/Detaining Authority,  
Coimbatore City, Coimbatore.
- 3.The Superintendent of Prison,  
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- 4.The Inspector of Police,  
E2 Peelamedu Police Station,  
Coimbatore City.
- 5.The Public Prosecutor  
High Court, Madras.



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

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