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H.C.P.No.2512 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.2512 of 2022

Shifanath

.. Petitioner

VS

1.The Secretary to Government of India,
Ministry of Home Affairs
(Department of Internal Security),
North Block, New Delhi – 110 001.

2.The State of Tamil Nadu
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.

3.The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Coimbatore City,
Coimbatore – 641 018.

4.The Superintendent,
Central Prison, Coimbatore – 641 018.

5.The Inspector of Police,
VH Road Police Station,
Coimbatore.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to produce the body of



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the detenu by name Basha, son of Sottu, aged 36 years, presently confined at Central Prison, Coimbatore, before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order and grounds of detention order Tamil and English dated 13.10.2022 vide C.No.04/NSA/IS/2022 passed by the third respondent and quash the same.

For Petitioner	:	Dr.S.Manoharan for Mr.A.Nowfal
For Respondents	:	Mr.B.Ram Prabu, ACGSC for Mr.R.Rajesh Vivekananthan, Deputy Solicitor General for R1 Mr.E.Raj Thilak, Additional Public Prosecutor for R2 to R5

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 the detenu assailing a 'preventive detention order dated 13.10.2022 bearing reference C.No.04/NSA/IS/2022' [hereinafter 'impugned detention order' for the sake of convenience and brevity]. To be noted, fifth respondent is the sponsoring authority and third respondent is the detaining authority as



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impugned detention order has been made by third respondent under The National Security Act, 1980 (Central Act 65 of 1980).

2. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.182 of 2022 on the file of B-3 Variety Hall Road Police Station, for alleged offences under Sections 153, 285 and 435 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity], subsequently altered into one under Sections 307 and 436 IPC and Section 3 of Explosive Substances Act, 1908 and again altered into one under Sections 153(A), 307 and 436 IPC and Section 3 of Explosive Substances Act, 1908. 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.

3. Dr.S.Manoharan, learned counsel representing the counsel on record for petitioner, Mr.B.Ram Prabu, learned ACGSC representing Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General for first respondent and Mr.E.Raj Thilak, learned Additional Public Prosecutor for respondents 2 to 5 are before us.



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4. In the support affidavit qua captioned HCP, several grounds have been urged but in the hearing learned counsel for petitioner predicated his campaign against the impugned preventive detention order on one point and that one point turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail.

5. Learned counsel drew our attention to paragraphs 9(i) and 10 of the grounds of preventive detention order and submitted that the two cases viz., R.Kumaran's case bail order dated 06.10.2022 in Crl.O.P.No.24427 of 2022 on the file of this Court and Nagaraj's case bail order dated 09.12.2016 in Crl.M.P.No.3149 of 2016 on the file of I Additional District and Sessions Judge, Coimbatore have been relied on by the detaining authority to arrive at the subjective satisfaction that there is imminent possibility of detenu being enlarged on bail. Learned counsel drew our attention to both bail orders and submitted that in both bail orders there is no charge under Section 307 of IPC. We carefully perused the two bail orders and we also perused the alleged offences in the ground case. To be noted, alleged offences in the ground case were altered and post alteration, it is 153(A), 307 and 436 IPC and Section 3 of Explosive Substances Act, 1908

6. Mr.B.Ram Prabu, learned counsel representing the Deputy



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Solicitor General submitted that the first respondent is only a formal party and the only submission that would be made by the learned Deputy Solicitor General is the representation sent to the first respondent has since been rejected.

7. Learned Prosecutor submitted to the contrary and contended that the two cases are largely comparable in the light of Section 153A of IPC. We are disinclined to accept the submission in the case on hand as the charge under Section 307 IPC is very critical when it comes to discretionary relief of grant of bail. In that view of the matter, considering the facts and circumstances of the case on hand, we are of the view that the comparison is one that tantamounts to comparing apples and oranges. As it is a comparison of two dissimilar cases with one ground case, we are of the view that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly impaired on this ground. We are of the view that the impugned preventive detention order deserves to be dislodged.

8. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 13.10.2022 bearing reference C.No.04/NSA/IS/2022 made by the third respondent is set aside and



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the detenu Thiru.S.Basha, aged 36 years, son of Thiru.Sottu, 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.)
13.06.2023

Index : Yes / No
Neutral Citation : Yes / No
mmi

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

To

- 1.The Secretary to Government of India,
Ministry of Home Affairs
(Department of Internal Security),
North Block, New Delhi – 110 001.
- 2.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai – 9.
- 3.The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Coimbatore City,
Coimbatore – 641 018.
- 4.The Superintendent,
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- 5.The Inspector of Police,
VH Road Police Station,
Coimbatore.
- 6.The Public Prosecutor,
High Court, Madras.



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