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H.C.P.No.295 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

Coram

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

**H.C.P.No.295 of 2023**

G.Mathivathani

.. 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,  
D-4 Kuniyamuthur 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 the detenu by name Jesuraj, son of Suganraj, aged 34 years,



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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 ground of detention order Tamil and English dated 13.10.2022 vide C.No.03/NSA/IS/2022 passed by the third respondent and quash the same.

|                 |   |                                                                                                                                   |
|-----------------|---|-----------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner  | : | Dr.S.Manoharan<br>for Mr.A.Nowfal                                                                                                 |
| For Respondents | : | Mr.R.Rajesh Vivekananthan,<br>Deputy Solicitor General for R1<br>Mr.E.Raj Thilak,<br>Additional Public Prosecutor<br>for R2 to R5 |

### 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 28.02.2023, this Court made the following order:

*'Captioned Habeas Corpus Petition has been filed in this Court on 01.12.2022 inter alia assailing a detention order dated 13.10.2022 bearing reference C.No.03/NSA/IS/2022 made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.*

*2. Wife of the detenu is the petitioner.*



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3. *Dr.S.Manoharan, learned counsel representing counsel on record for habeas corpus petitioner is before us. Learned counsel submits that ground case qua the detenu is for alleged offences under Sections 153(A) and 436 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 3 of Explosive Substances Act, 1908 in Crime No.447 of 2022 on the file of D-4, Kuniyamuthur Police Station.*

4. *The aforementioned detention order has been made on the premise that the detenu's activities were prejudicial to the maintenance of public order under Section 3(2) of 'The National Security Act, 1980 (Central Act 65 of 1980)'.*

5. *The detention order has been assailed inter alia on the ground that the arrest of the detenu was not intimated to any of relatives of the detenu.*

6. *Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.*

7. *Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'*

2. The aforementioned order made in the 28.02.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.



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3. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.447 of 2022 on the file of D-4 Kuniamuthur Police Station for the alleged offences under Sections 153(A), 436 IPC and Section 3 of Explosive Substances Act, 1908, subsequently altered into one under Sections 120(B), 153(A), 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.

4. Dr.S.Manohran, learned counsel representing the counsel on record for petitioner, Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General of India for first respondent and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for respondents 2 to 5 are before us.

5. In the Admission Board, though the point that the arrest of the detenu was not intimated to any of the relatives was projected in the final hearing today, Dr.S.Manoharan, learned counsel representing the counsel for petitioner submitted that subjective



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satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. In support of his argument, learned counsel submitted (as would be evident from the grounds of detention) that the detaining authority has relied on bail order in one *Nagaraj's case* being bail order dated 09.12.2016 in Crl.M.P.No.3149 of 2016 on the file of I Additional District and Sessions Judge (Principal District and Sessions Judge (i/c)), Coimbatore to arrive at subjective satisfaction. Learned counsel pointed out that in *Nagaraj's case* bail order, there is no Section 120B IPC allegation and that is a case where the investigation has been completed and the Prosecutor had made it clear that the investigation has been completed and charge sheet is going to be filed. Learned counsel pointed out that in the case on hand, Section 120B IPC has been included after charges were altered, after change of investigating agency. Learned counsel also submits that as on the date of detention order, investigation was pending.

6. As regards the first respondent, Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General for first respondent submitted that the representation dated 13.11.2022 was rejected on 18.12.2022. to be noted, in other aspects, first respondent is



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more of a formal party and the role of the first respondent is limited to this aspect of the matter.

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7. Mr.E.Raj Thilak, learned State Additional Public Prosecutor submitted that the offence in *Nagaraj's case* bail order and the case on hand are broadly comparable.

8. We carefully considered the rival submissions. We find that Section 120B IPC was specifically included after alteration of the provisions. Therefore, it assumes significance in the case on hand. As regards the stage of investigation i.e., Prosecutor saying that investigation has been completed and they are going to file charge sheet and investigation pending are vastly different qua determinants for grant of bail. In the case on hand, considering the facts and circumstances, we find that this difference also assumes significance. In this regard, we remind ourselves that imminent possibility of detenu being enlarged on bail is not qua time but qua probability. Therefore, we have no difficulty in coming to the conclusion that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is impaired.



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9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 13.10.2022 bearing reference C.No.03/NSA/IS/2022 made by the third respondent is set aside and the detenu Thiru.S.Jesuraj, aged 34 years, son of Thiru.Suganraj, 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.)  
26.06.2023

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

mmi

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

5.The Inspector of Police,  
D-4 Kuniyamuthur Police Station,  
Coimbatore.

6.The Public Prosecutor,  
High Court, Madras.

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