



WEB COPY



HCP NO.2621 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

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

H.C.P.NO.2621 OF 2022

Santhamurthy, V.

.. Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. By its Secretary to Government
Home, Prohibition & Excise Department
Fort St. George, Chennai – 9.
- 2.The District Collector and
The District Magistrate
Chengalpattu District,
Chengalpattu.
- 3.The Superintendent
Women Special Prison
Puzhal, Chennai – 600 066.
- 4.The Inspector of Police
PEW, Madhuranthangam,
Chengalpattu District.
- 5.The Superintendent of Police
Chengalpattu District.

.. Respondents



HCP NO.2621 OF 2022

PRAYER: 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 detenue namely Muruvammal wife of Velu aged about 44 years before this Court and set her at liberty forthwith, by calling for the records pertaining to the detention order in C.P.T.No.66/2022 dated 16.11.2022 passed by the 2nd respondent, quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.T.Dharani

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 son of detenue assailing a 'preventive detention order dated 16.11.2022 bearing reference C.P.T.No.66/2022 [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.



HCP NO.2621 OF 2022

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 detenue is a 'Bootlegger' within the meaning of Section 2(b) of Act 14 of 1982.

3. There are two adverse cases. The ground case which constitutes substantial part of substratum of the impugned detention order is Crime No.787 of 2022 on the file of Madhuranthagam Prohibition Enforcement Wing for the alleged offence under Section 4(1)(aaa) 4(1-A) of Tamil Nadu Prohibition Act 1937 read with 6 and 11 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.



HCP NO.2621 OF 2022

4.Mr.T.Dharani, learned counsel on record for petitioner and

Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.Though several points have been urged / raised in the support affidavit qua captioned HCP, Mr.T.Dharani, learned counsel on record for the petitioner in the hearing projected, predicated and posited his argument on one point and that one point turns on subjective satisfaction of Detaining Authority qua imminent possibility of the detenue being enlarged on bail.

6.Elaborating on the aforementioned submission, drawing our attention to the grounds of impugned preventive detention order learned counsel submitted that the Detaining Authority has relied on a bail order dated 25.08.2020 in the case of one Raji in 'CrI.M.P.No.2698 of 2020 vide Crime No.1688 of 2020 on the file of Madurantakam Police Station' (hereinafter '*Raji's case*' for the sake of convenience and clarity) to arrive at above mentioned subjective satisfaction.



HCP NO.2621 OF 2022

7.The aforementioned Raji's case bail order has been furnished to the detainee as part of the grounds booklet. We had the benefit of perusing Raji's case bail order, the relevant portion in Raji's case bail order reads as follows:

'.....In furtherance to the directions of the Hon'ble Chief Justice of High Court, Madras vide letter dated 21.03.2020 and pursuant to directions of the Hon'ble Supreme Court in Suo Motu W.P.(Civil) No.1/2020 In Re: Contagion of COVID 19 Virus in prisons and also in view of the directions given by the High Power Committee appointed by the Hon'ble Supreme Court of India, New Delhi and also considering the urgent need and necessity to ensure social distancing and thereby reducing the scope of infection, it is essential that the prisons are decongested as much as possible.'



HCP NO.2621 OF 2022

8.The aforementioned portion of Raji's case bail order is a clear case of then prevalent COVID-19 situation and the bail order speaks for itself in this regard. In other words, learned counsel for petitioner urges one point i.e., in Raji's case bail has been granted by the learned Sessions Judge owing to the then obtaining Covid-19 situation and therefore the same does not apply to the case on hand as the date of the impugned preventive detention order is 16.11.2022.

9.The comparison of the case on hand with Raji's case bail order is clearly flawed comparison which reminds one of the age old adage 'comparing Apples and Oranges'. We also remind ourselves that imminent possibility of being enlarged on bail is not qua time but qua probability. In this view of the matter, as the subjective satisfaction arrived at by the Detaining Authority is flawed, the impugned preventive detention order is vitiated and the same deserves to be dislodged.

10.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 16.11.2022 bearing reference CPT No.66/2022 made by the second respondent is set aside and the detenue



HCP NO.2621 OF 2022

Tmt.Muruvammal, aged 44 years, wife of Thiru. Velu, 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.)

20.06.2023

Index : Yes

Neutral Citation : Yes

TK

P.S: Registry to forthwith communicate this order to Jail authorities in Women Special Prison, Puzhal, Chennai.

To

- 1.The Secretary to Government
Government of Tamil Nadu
Home, Prohibition & Excise Department
Fort St. George, Chennai – 9.
- 2.The District Collector and
The District Magistrate
Chengalpattu District, Chengalpattu.
- 3.The Superintendent
Women Special Prison
Puzhal, Chennai – 600 066.
- 4.The Inspector of Police
PEW, Madhuranthangam, Chengalpattu District.
- 5.The Superintendent of Police
Chengalpattu District.
- 6.The Public Prosecutor, High Court, Madras.



WEB COPY



HCP NO.2621 OF 2022

M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

TK

H.C.P.NO.2621 OF 2022

20.06.2023