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H.C.P.No.35 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

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

H.C.P.No.35 of 2023

M.Samim
W/o.Iqbal

.. Petitioner / Mother of the detenu

Vs.

- 1.The Additional Secretary to Government
Home, Prohibition & Excise Department
Secretariat
Chennai – 600 009.
 - 2.The Commissioner of Police/Detaining Authority
Coimbatore City
Coimbatore District.
 - 3.The Inspector of Police
D-1, Ramanathapuram Police Station
Coimbatore.
 - 4.The Superintendent of Police
Central Prison – Special Prison for Woman
Coimbatore.
- .. Respondents



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Prayer:

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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 made in C.No.75/G/IS/2022 dated 22.11.2022 passed by the Commissioner of Police/Detaining Authority, Coimbatore City the second respondent herein and set aside the same and direct the respondents to produce the detenue before the Court and set the detenue Tmt.A.Mubeena, W/o.Anwar Basha, aged 42 years now confined at Central Prison, Special Prison for Women, Coimbatore at liberty .

For Petitioner	:	Mr.S.Senthil Vel, for Mr.N.Sudharsan
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 Mother of detenu assailing a 'preventive detention order dated 22.11.2022 bearing reference C.No.75/G/IS/2022' (hereinafter 'impugned detention order' for the sake of convenience). To be noted, third respondent

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is the sponsoring authority and second respondent is the detaining authority

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

3.There are no adverse cases and there is one ground case. The ground case which is the substratum of the impugned detention order is Crime No.477 of 2022 on the file of D-1, Ramanathapuram Police Station for alleged offences under Sections 8(c) r/w 20(b)(ii)(C) and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 ['NDPS Act' for the sake of brevity]. Owing to the nature of the challenge to the impugned detention order, it is not necessary to delve in to the factual matrix or be detained



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further by facts.

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4.Mr.S.Senthilvel, learned counsel representing Mr.N.Sudharsan, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5.In the support affidavit qua captioned HCP, multiple points have been raised/urged but in the hearing Mr.S.Senthilvel, learned counsel representing counsel on record for the petitioner predicated his campaign against impugned preventive detention order on one point which finds favour with us. This one point turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of the detenu being enlarged on bail.

6.A careful perusal of the impugned preventive detention order brings to light that the detaining authority has relied on bail order dated 20.09.2016 made in C.M.P.No.902 of 2016 on the file of Additional District and Sessions Judge, Special Court for E.C Act Cases, Coimbatore. Adverting to



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Raja's case bail order, learned counsel submitted that it is a case which falls under Section 20(b)(ii)(B) of NDPS Act, 1985 which is lesser than commercial quantity i.e., lesser than 20 Kg. To be precise, it is what is known as in between quantity i.e., between 1 Kg and 20 Kgs. This is vide Schedule II of NDPS Act.

7.Learned counsel submitted that the case on hand is one of alleged possession of 21 Kgs of Ganja which is a commercial quantity. Learned Prosecutor submitted to the contrary and submitted that Raja's case bail order and the case on hand arise under NDPS Act but we are unable to accept the averment of the Prosecutor in the light of Section 37 of NDPS Act.

8.In the light of Section 37 of NDPS Act, we are of the view that comparison of Raja's case with the ground case is a case of comparison of Apples and Oranges or in other words comparison of dissimilar cases. This means that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of the detenu being enlarged on bail is impaired.



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The sequitur is impugned preventive detention order deserves to be dislodged.

9.Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.

10.Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 22.11.2022 bearing reference C.No.75/G/IS/2022 made by the second respondent is set aside and the detenu Tmt.A.Mubeena, W/o.Thiru.Anwar Basha, aged 42 years 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.)
19.06.2023

Index : Yes

Speaking order

Neutral Citation : Yes

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

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Madras High Court, Chennai



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