



H.C.P.No.2705 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.2705 of 2022

Shahitha Banu

.. 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/
Public [L&O-F] Department,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.
- 3.The District Magistrate and District Collector/
Detaining Authority,
Office of the District Collector,
Coimbatore – 641 018.
- 4.The Commissioner of Police/Detaining Authority,
Office of the Commissioner of Police,
Coimbatore City, Coimbatore – 641 018.

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

6.The Inspector of Police,
Pollachi West P.S.,
In Crime No.256 of 2022,
Coimbatore District.

.. 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 Abdul Jaleel, son of Muthalif, aged 34 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 17.10.2022 vide Cr.M.P.No.02/NSA/2022/E1 passed by the 3rd respondent and quash the same.

For Petitioner : Dr.S.Manoharan
for Mr.A.Nowfal

For Respondents
R1 : Mr.C.Samivel
Senior Central Government Standing Counsel

R2 to R6 : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John



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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 detenu assailing a 'preventive detention order dated 17.10.2022 bearing reference Cr.M.P.No.02/NSA/2022/E1' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity]. To be noted, sixth respondent is the sponsoring authority and third respondent is the detaining authority as impugned detention order has been made by third respondent.

2.Impugned detention order has been made under 'sub-section (2) of Section 3 of the National Security Act, 1980 [Central Act 65/1980] read with the order issued by the Government in G.O.(MS).No.488, Public [Law and Order-F] Department dated 18.07.2022.

3.There are two adverse cases. The ground case which constitutes considerable chunk of substratum of the impugned preventive detention



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order is Crime No.257/2022 on the file of Pollachi West Police Station for alleged offences under Sections 427, 435 read with 511 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 3(1) of Tamil Nadu Property [Prevention of Damage and Loss] Act, 1992. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4.Dr.S.Manoharan, learned counsel representing learned counsel on record for petitioner, Mr.C.Samivel, learned Senior Central Government Standing Counsel for first respondent and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.M.Sylvester John, learned counsel for respondents 2 to 6 are before us.

5.In the support affidavit of the captioned HCP, very many points/grounds have been urged/raised but Dr.S.Manoharan, learned counsel representing counsel on record for petitioner in the final hearing predicated his campaign against the impugned preventive detention order on one point



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and that one point turns on subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail.

Elaborating on this argument, learned counsel for petitioner drew our attention to paragraph 5 of the impugned preventive detention order and the most relevant portion of paragraph 5 in this regard is as follows:

'.....Further it is revealed from the confession statement of Thiru.Abdul Jaleel given on 28.09.2022 that a case in Coimbatore District, Pollachi West Police Station Crime No.256/2022 was registered against Thiru.Abdul Jaleel and his associates. Further, it is revealed from the confession statement of Thiru.Abdul Jaleel given on 28.09.2022 that a case in Coimbatore District, Pollachi West Police Station Crime No.260/2022 was registered against Thiru.Abdul Jaleel and his associates. Further it is revealed from the confession statement of Thiru.Abdul Jaleel given on 28.09.2022 that a case in Coimbatore District, Pollachi West Police Station Crime No.257/2022 was registered against Thiru.Abdul Jaleel and his associates. Further Thiru.Abdul Jaleel has not filed any bail petition in the case of Coimbatore District, Pollachi West Police Station Crime No.257/2022 under Sections 427, 435 r/w. 511 IPC



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Loss] Act, 1992 and 4(a), 5 The Explosive Substances Act, 1908.....'

6. Adverting to the aforementioned portion of paragraph 5, learned counsel for petitioner submitted that the subjective satisfaction qua imminent possibility of detenu being enlarged on bail arrived at by the detaining authority is flawed for more than one reason and to put it differently for atleast two reasons and the two reasons which were projected by learned counsel for petitioner are as follows:

- (1) The detaining authority has relied on bail order dated 09.12.2016 in CrI.M.P.No.3149 of 2016 on the file of Principal District and Sessions Court, Coimbatore [this case shall be referred to as *Nagaraj's case* as Nagaraj is the petitioner in this case] for arriving at subjective satisfaction but *Nagaraj case* is completely different considering the fact that it pertains to alleged offences under Sections 436, 295, 153(A)(2) of IPC and Section 3 of Explosive Substances Act, 1908 whereas the ground case in the case on hand pertains to Sections 427, 435 r/w. 511 IPC r/w. 3(1) Tamil Nadu Property [Prevention of Damage and Loss] Act, 1992 @ under Sections 147, 148, 153(A), 120(b), 435 r/w. 511 IPC and 3(1) Tamil Nadu Property [Prevention of Damage and Loss] Act,



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1992 @ under Sections 147, 148, 153(A), 120(b), 435 r/w. 511 IPC and 3(1) Tamil Nadu Property [Prevention of Damage and Loss] Act, 1992 and 4(a), 5 The Explosive Substances Act, 1908;

(2) No bail application has been moved by the detenu but imminent possibility subjective satisfaction has been arrived at.

7. In response to the above, Mr.C.Samivel, learned Senior Central Government Standing Counsel for first respondent submitted that this is broadly in the domain of the detaining authority who is represented by the learned State Additional Public Prosecutor and therefore, it will suffice to say that a representation dated 10.11.2022 was sent by the detenu, the same was received by the first respondent on 23.11.2022, the first respondent sought English translation, the same was given in two days therefrom and it was rejected on 10.12.2022. Learned counsel submitted that this factum has been captured in Sub-paragraph (2) of Paragraph 4 of the counter affidavit of the first respondent]. This takes us to the submission of the learned Additional Public Prosecutor who is for respondents 2 to 6.



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8.Learned Additional Public Prosecutor submitted to the contrary and said that as regards the first facet, the offences are broadly comparable and as regards the second facet, the detaining authority has proceeded on the basis that if a bail application is moved, there is a possibility of bail being granted.

9.We are of the view that a comparison of the alleged offences may not be necessary as there are two other facets i.e., second point and one other facet which weigh with us. The second point that weigh with us is the detaining authority has categorically recorded that the detenu has not filed any bail petition. Therefore, to say that if a bail petition is moved, there is a possibility of detenu being enlarged on bail would take the matter into the realm of surmises and conjectures. The subjective satisfaction qua imminent possibility of detenu being enlarged on bail cannot be predicated on certain assumptions which are in the realm of surmises and conjectures and this is *ipse dixit* of the detaining authority. Therefore, the second facet pointed out by learned counsel for petitioner is sustained.



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10. Besides aforementioned second facet being sustained, we had the benefit of perusing Nagaraj bail order as the same is at pages 201 and 202 of grounds booklet. A careful perusal of this bail order shows that **Nagaraj's case** is one where investigation has been completed and that has weighed with the learned Sessions Judge in gravitating towards exercising his discretion in favour of granting bail. This is articulated in one portion of the bail order which reads as follows:

'.....According to him investigation is completed and charge sheet is going to be filed.'

To be noted, 'him' is a reference to learned Prosecutor as this paragraph captures the submission of learned Prosecutor in **Nagaraj's case**.

11. In complete contradistinction, there is no disputation as regards the factual position in the case on hand that as on the date of the impugned preventive detention order i.e., as on 17.10.2022, investigation had not been completed. This means that comparison of the case on hand with **Nagaraj's case** for arriving at subjective satisfaction is clearly flawed and impaired. It is flawed and impaired as it is an exercise that reminds us of age old adages comparing 'Apples' and 'Oranges' or 'Cheese' and 'Chalk'. In this view of



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the matter, as a sequitur we have no hesitation in saying that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is clearly flawed leaving the impugned preventive detention order vitiated and liable to be dislodged. We dislodge the impugned preventive detention order.

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 17.10.2022 bearing reference Cr.M.P.No.02/NSA/2022/E1 made by the third respondent is set aside and the detenu Thiru.Abdul Jaleel, male, aged 34 years, son of Thiru.Muthalif 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.)

(M.N.K.,J.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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



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To

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- 1.The Secretary to Government of India,
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[Department of Internal Security],
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Coimbatore District.
- 7.The Public Prosecutor
High Court, Madras.



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and
M.NIRMAL KUMAR, J.,

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