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H.C.P.No.2704 of 2022

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.2704 of 2022

A.K.Jainulabudeen
S/o.Jaleel

.. Petitioner /
Father of the detenu

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 – 600 009
3. The District Magistrate and District Collector/Detaining Authority
Office of the District Collector
Coimbatore – 641 018



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4. The Superintendent
Central Prison
Coimbatore – 641 018

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

6. The Inspector of Police
Mettupalayam Police Station
In Cr.No.760 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 Wahidur Rahman, son of Jainulabudeen, aged 25 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 15.10.2022 vide Cr.M.P.No.01/NSA/2022/E1 passed by the third respondent and quash the same.

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

For Respondents : Mr.S.Samivel
Senior Central Government Standing
Counsel for R1
Mr.E.Raj Thilak
Additional Public Prosecutor for R2 to R6



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ORDER

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[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the father of the detenu assailing a 'preventive detention order dated 15.10.2022 bearing reference Cr.M.P.No.01/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 under sub-section (2) of Section 3 of the 'National Security Act, 1980 (Central Act 65/1980)' [hereinafter 'said Act' for the sake of brevity and convenience] read with the order issued by the Government in G.O (M.S) No.488 Public (Law and Order-F) Department dated 18.07.2022 under sub-section (3) of Section 3 of the said Act.

2. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.762 of 2022 on the file of Mettupalayam Police Station, for alleged offences under Section 436 of 'The Indian Penal



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Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 4 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 more into the factual matrix or be detained further by facts.

3. Dr.S.Manoharan, learned counsel representing the counsel on record for petitioner, Mr.S.Samivel, learned Senior Central Government Standing Counsel for first respondent and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for respondents 2 to 6 are before us.

4. As regards first respondent Mr.C.Samivel, learned Senior Central Government Standing counsel for first respondent adverting to the counter affidavit submitted that a representation dated 11.11.2022 has since been rejected but we do not propose to delve into the same as the matter turns on another point.

5. The other point on which captioned matter turns pertains to subjective satisfaction arrived at by the Detaining Authority qua imminent possibility of detetnu being enlarged on bail. A careful perusal of the impugned preventive detention order brings to light that the Detaining



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Authority has relied on Thiru. Mahalingam's case bail order dated 20.03.2018 made in C.M.P.No.1189 of 2008 on the file of District Munsif-cum-Judicial Magistrate, Andipatti to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on bail.

6. We had the benefit of perusing the Mahalingam's case bail order which has been furnished to the detenu as part of the grounds booklet. A careful perusal of Mahalingam's case bail order brings to light that it is a default bail order under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity]. In a default bail under Section 167(2) Cr.P.C, learned Judicial Magistrate has little / no discretion. Therefore, comparing a default bail with the ground case to arrive at subjective satisfaction that there is imminent possibility of the detenu being enlarged on bail is clearly a flawed exercise. The sequitur of this flawed exercise is, the impugned preventive detention order gets vitiated *inter alia* by non-application of mind and deserves to be dislodged.

7. Ergo, the captioned HCP is allowed. Impugned preventive detention order dated 15.10.2022 bearing reference



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Cr.M.P.No.01/NSA/2022/E1 made by the third respondent is set aside and the detenu Thiru.Wahidur Rahman, son of Thiru.Jainullabudeen, aged 25 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/No

Speaking order/Non-speaking order

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

1. The Secretary to Government of India
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(Department of Internal Security)
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