



H.C.P(MD)No.230 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.10.2023

Coram

THE HON'BLE MR.JUSTICE M.SUNDAR
and
THE HON'BLE MR. JUSTICE R.SAKTHIVEL

H.C.P(MD)No.230 of 2023

Mohammed Ushen

.. Petitioner

VS

**1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.**

**2.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.**

**3.The Superintendent of Prison,
Borstal School,
District Prison,
Pudukkottai District.**

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the entire records connected with the detention order of the second respondent in C.No.162/Detention/C.P.O/T.C/2022 dated 14.11.2022 and quash the



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same and direct the respondents to produce the body or person of the detenu by name Mohammed Ushen, son of Mohammed Musthafa, aged about 29 years, now detained as “Sexual Offender” at Borstal School, District Prison, Pudukkottai District before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Balasubramanian
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated 14.11.2022 C.No.162/Detention/C.P.O/T.C/2022' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent but we find that Station House Officer of Cantonment All Women Police Station is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.



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2. Impugned preventive 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 a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.19 of 2022 on the file of Cantonment All Women Police Station for the alleged offences under Sections 450 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and 5(L) read with 6(1) of 'Protection of Children from Sexual Offences Act, 2012' [hereinafter 'POCSO Act' for the sake of convenience and clarity] and subsequently altered into Sections 392, 450 and 506(ii) of



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IPC and 5(L) read with 6(i) of POCSO Act. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

4.Mr.N.Balasubramanian, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.

5.In the support affidavit qua captioned HCP several points have been raised but in the final hearing Board, learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on one point. This one point is the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired.

6.Elaborating on this submission, learned counsel for HCP petitioner drew our attention to a portion of paragraph 5 of the grounds of the impugned preventive detention order which reads as follows:



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'5..... In a similar case registered at Tiruchirappalli City Cantonment (L & O) PS Crime No.961/2022 bail was granted in Cr.M.P.No.836/2022 on 02.08.2022 to the accused Mahendran who was remanded on 26.06.2022. Hence I infer that there is a real possibility of his (Mohammed Ushen) coming out on bail in these cases by filing another bail petitions before the appropriate Court. If he comes out on bail, he will indulge in such activities in future, which will be prejudicial.....'

7. Thereafter, learned counsel for petitioner pointed out that the similar case bail order (hereinafter 'P.Mahendran's case' for the sake of convenience and clarity) is at page 177 of the grounds booklet served on the detenu. Adverting to P.Mahendran's case bail order, learned counsel drew our attention to one portion of the bail order which reads as follows:

'.....The said Indrani was present before this Court and she has represented stating that she has no objection to release the petitioner/accused on bail. The learned counsel for the petitioner would submit that the petitioner/accused is young person aged 20 years and he has no bad antecedent and there is no previous case against him.'



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8.Adverting to the aforementioned portion of the bail order in P.Mahendran's case, learned counsel submitted that in P.Mahendran's case, the defacto complainant (Indrani) appeared before the Court and said she has no objection for grant of bail and P.Mahendran's case is one where there was no bad antecedents for the petitioner. In contradistinction, in the case on hand, there is no such no objection (in any case it is an offence against State) and there are as many as three adverse cases even according to the grounds of the impugned preventive detention order.

9.In response to the aforesaid argument, learned Prosecutor submitted to the contrary.

10.Learned Prosecutor submitted that the offences in the ground case and in P.Mahendran's case are broadly comparable.

11.This Court has repeatedly held that as regards subjective satisfaction qua imminent possibility of detenu being enlarged on bail it



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is not merely a comparison of alleged offences but the determinants/parameters for grant of discretionary relief of bail is also relevant.

12.In the case on hand, the determinants/parameters in P.Mahendran's case are clearly different as defacto complainant has said no objection and there are no bad antecedents for the petitioner therein which is different, distinct and vastly on a different footing qua the ground case. Therefore, we have no difficulty in sustaining the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority as regards the imminent possibility of detenu being enlarged on bail is impaired. This means that the impugned preventive detention order is vitiated and the same is liable to be dislodged in the habeas legal drill on hand.

13.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.11.2022 bearing C.No.162/Detention/C.P.O/T.C/2022 made by the second respondent is set aside and the detenu Thiru.Mohammed Ushen, aged 29 years, son of



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Thiru.Mohammed Musthafa 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.)
16.10.2023

Index : Yes/No

Neutral Citation : Yes/No

ps

P.S: Registry to forthwith communicate this order to Jail authorities in Borstal School and District Jail, Pudukkottai District.



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- To
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Tiruchirappalli.
 - 3.The Superintendent of Prison,
Borstal School,
District Prison,
Pudukkottai District.
 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
R.SAKTHIVEL, J.,

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