



HCP(MD)No.588 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.588 of 2023

Kaliraj

: Petitioner

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tenkasi District,
Tenkasi.



HCP(MD)No.588 of 2023

WEB COPY

3. The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai,
Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in Detention Order M.H.S.Confdl No.25/2023 dated 11.04.2023 and quash the same and to direct the respondents to produce the body or person of the detenu by name Kaliraj son of Ayothi, aged about 22 years, now confining as "Goonda" at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Prakash

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

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

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the detenu assailing a 'preventive detention order dated



HCP(MD)No.588 of 2023

11.04.2023 bearing reference M.H.S.Confdl No.25/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience] made by the second respondent District Collector, who shall hereinafter be referred to as 'detaining authority' for the sake of convenience and clarity. To be noted, sponsoring authority has not been arrayed as a respondent but we find that Station House Officer of Sivagiri Police Station is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

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] branding the detenu as a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3.There is no adverse case. The impugned preventive detention order has been passed based on a solitary case in Crime No.74 of 2023 on the file of Sivagiri Police Station for the alleged offences



HCP(MD)No.588 of 2023

under Sections 147, 341 and 302 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] which was subsequently altered into one under Sections 147, 148, 341, 302 and 506(ii) of IPC. Considering the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

4. When the captioned HCP was listed in the admission board, a Coordinate Hon'ble Division Bench issued *Rule Nisi* on 10.05.2023.

5. Today, Mr.R.Prakash, learned Counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all the respondents are before us.

6. In the support affidavit *qua* captioned HCP several grounds have been raised, but learned Counsel for petitioner predicated his campaign against the impugned Preventive Detention Order on one point and that point turns on assessment of subjective satisfaction arrived at by the detaining authority *qua* imminent possibility of the detenu being enlarged on bail is impaired. Elaborating his submission



HCP(MD)No.588 of 2023

in this direction, learned Counsel drew our attention to a portion of paragraph No.5 of grounds of impugned preventive detention order which reads as follows:

'5.I am also aware that in a similar case bail has been granted to Mariappan in CRMP No. 1985/2020 on 13.03.2020 by the Sessions Court, Tirunelveli. I therefore infer that there is real possibility of Thiru.Kaliraj coming out on bail in Sivagiri Police Station Crime Number 74/2023: since bails are granted by the appropriate courts in such cases.'

7.Adverting to the aforementioned portion of paragraph No.5 of grounds of impugned preventive detention order, learned counsel for petitioner submitted that the detaining authority has relied on 'bail order dated 13.03.2020 made in Cr.M.P.No.1985 of 2020, on the file of Sessions Court, Tirunelveli' [hereinafter **Mariappan's** bail order for the sake of brevity].

8.Mariappan's bail order has been furnished to the detenu as part of the grounds booklet and adverting to **Mariappan's** bail order, learned Counsel for petitioner submitted that in **Mariappan's** bail



HCP(MD)No.588 of 2023

order, three determinants have weighed in the mind of the bail Court and they are:

- a) Mariappan remained incarcerated for 75 days.
- b) Investigation is almost complete.
- c) Co-accused in the case has already been granted bail by the same Court.

9. Learned Counsel drew our attention to the relevant portion of ***Mariappan's*** bail order which reads as follows:

'5. Petitioner is undergoing incarceration for the past 75 days. Investigation is almost completed. Co-accused in this case has already been granted bail by this Court.'

10. Learned Counsel for petitioner submitted that in the case on hand ie., the ground case which is a solitary case is the sole substratum of the impugned preventive detention order and all three determinants as in ***Mariappan's*** case are absent as the impugned preventive detention order has been made on the 28th day of arrest, investigation was not complete on the date of the impugned preventive detention order and on the date of the impugned



HCP(MD)No.588 of 2023

preventive detention order, all the co-accused were in prison and none of them had been enlarged on bail.

11.In response to the aforementioned arguments, learned State Additional Public Prosecutor submitted to the contrary that the alleged offences in **Mariappan's** case are those offences punishable under Sections 147, 148, 294(b), 302, 120(B) & 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and therefore, the ground case and **Mariappan's** case are broadly comparable.

12.We carefully considered the rival submissions.

13.This Court has repeatedly held that when it comes to subjective satisfaction of the detaining authority as regards imminent possibility of detenu being enlarged on bail it is not just comparison of the alleged offence but it is also comparison of determinants/parameters for grant of bail which is a discretionary relief in law.



HCP(MD)No.588 of 2023

14.From the narrative thus far, it will be clear that three distinct and clear determinants / parameters have weighed in the mind of the trial Court and all three distinct / clear determinants are completely different *qua* the ground case. Therefore, we have no hesitation in accepting the argument of the learned Counsel for the petitioner that subjective satisfaction arrived at by the detaining authority *qua* imminent possibility of the detenu being enlarged on bail is impaired.

15.The sum sequitur of narrative and dispositive reasoning thus far is, the subjective satisfaction arrived at by the detaining authority *qua* imminent possibility of the detenu being enlarged on bail is impaired and the impugned preventive detention order is vitiated and becomes liable for being dislodged in this habeas legal drill. Therefore, the case on hand is one more in this long line of authorities where the impugned preventive detention orders have been interfered with and dislodged in a habeas legal drill when the subjective satisfaction arrived at by the detaining authority *qua* imminent possibility of the detenu being enlarged on bail is impaired.



HCP(MD)No.588 of 2023

16.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 11.04.2023 bearing reference M.H.S.Confdl No.25/2023 made by the second respondent is set aside and the detenu Thiru.Kaliraj, son of Thiru.Ayothi, aged 22 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.]
04.10.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

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



HCP(MD)No.588 of 2023

WEB COPY

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tenkasi District,
Tenkasi.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Palayamkottai,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.588 of 2023

M.SUNDAR, J.
and
R.SAKTHIVEL, J.

MR

ORDER MADE IN
H.C.P.(MD)No.588 of 2023

04.10.2023