



H.C.P(MD)No.719 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2023

Coram

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

H.C.P(MD)No.719 of 2023

B.Nathasha

.. Petitioner

VS

1.The State of Tamil Nadu,
Represented by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Inspector of Police,
South Police Station,
Thoothukudi.

4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli 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 records



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relating to the detention order passed by the second respondent in H.S. (M).Confdl.No.58/2023 dated 12.04.2023 and to quash the same and direct the respondents to produce the person or body of the detenu, Ajan, S/o.Arulappan, aged about 25 years, before this Court and set him at liberty, now detained at Central Prison, Palayamkottai.

For Petitioner : Mr.A.Joseph Jerry for
Mr.M.Maruthupandian
and Mr.A.Purantharadhas

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by R.SAKTHIVEL, J.]

The petitioner herein filed Crl.M.P.(MD) No.16172 of 2023 for fixing an early date of hearing. At the time of hearing, the learned counsel for the petitioner has sought leave of this Court to withdraw the said Crl.M.P. In that effect, he has made an endorsement in the case file. Hence, the Crl.M.P.(MD) No.16172 of 2023 has been dismissed as withdrawn today.

2. Mr.A.Joseph Jerry, the counsel representing for the petitioner has prayed to take up this 'Habeas Corpus



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Petition' [hereinafter referred to as 'HCP'] today. Mr.A.Thiruvadi Kumar, the learned Additional Public Prosecutor is before this Court.

With the consent of both sides, this main HCP is taken up for hearing.

3. This HCP has been filed by wife of the detenu on 14.06.2023 assailing a 'preventive detention order dated 12.04.2023 bearing reference H.S(M). Confdl.No.58/2023' [hereinafter referred to as 'impugned preventive detention order']. To be noted, the second respondent is the Detaining Authority as the impugned preventive detention order has been made by second respondent. The third respondent namely, the Inspector of Police, South Police Station, Thoothukudi is the Sponsoring Authority [hereinafter referred to as 'Sponsoring Authority'].

4. 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



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1982)' [hereinafter referred to as 'Act 14 of 1982'] on the premise that the detenu is a 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

5. The third respondent registered a case against the detenu and others in Crime No.397 of 2022 on the file of Thoothukudi South Police Station, for alleged offences under Sections 8(c) r/w 20(b)(ii)(B), 28 and 29(1) of 'The Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter referred to as 'NDPS Act'] and altered into Sections 8(c) read with 20(b)(ii)(C), 29(1) of NDPS Act. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to go through the factual matrix of the case.

6. The petitioner has filed an affidavit in support of this HCP wherein she has raised various grounds against the impugned preventive detention order, but today, in the final hearing board, the learned counsel representing for the petitioner has projected his argument that the Detaining Authority before passing the impugned preventive detention order has not applied his mind. He has further submitted that subjective



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satisfaction arrived at by the Detaining Authority regarding the imminent possibility of the detenu being enlarged on bail is without any acceptable material or evidence. In this regard, he drew our attention to a portion of paragraph No.(7) of the grounds of the impugned preventive detention order which reads as follows:

'I am aware that accused Ajan has filed bail petition in the ground case registered in Thoothukudi South Police Station Crime No.397/2022 under Section 8(c) r/w 20(b)(ii)(B), 28, 29(1) of NDPS Act, 1985 @ 8(c) read with 20(b)(ii)(C), 29(1) of NDPS Act, 1985 before the Principal Special Court for NDPS Act cases, Madurai vide Crl.M.P.No.733/2023 dated 20.03.2023 and that was dismissed on 31.03.2023. In a similar case registered Thoothukudi South Police Station Crime No.686/2019 under Section 8(c) read with 20(b)(ii)(B) NDPS Act, 1985 bail was granted to accused Mariganesh Samgnanaraj before the Principal Special Court for NDPS Act cases, Madurai vide Crl.M.P.No.4451/2019 dated 19.11.2019. Hence, I infer that it is very likely of his coming out on bail in the above ground case, since bails are granted by Court in such cases.'

7. The learned counsel has submitted that the Detaining Authority relied on Mari Ganesh Sam Gnana Raj's case bail order as



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similar case bail order, in which case, Mari Ganesh Sam Gnana Raj was charged for the offence under Section 8(c) r/w. 20(b)(ii)(B) of NDPS Act. Further he has submitted that the contraband involved in that case is 1.250 Kgs. of Ganja which is classified as 'intermediate quantity' and the rigour under Section 37 of NDPS Act was not applicable while considering the bail plea to Mari Ganesh Sam Gnana Raj's case bail order. Hence the learned Special Judge granted bail to the petitioner therein. On the other hand, if the bail plea is raised in the ground case, the rigour under Section 37 of NDPS Act would apply to the ground case which is registered under Section 8(c) r/w. 20(b)(ii)(C), 29(1) of NDPS Act. The said aspects has not been considered by the Detaining Authority. Hence the subjective satisfaction recorded by the Detaining Authority with regard to the imminent possibility of the detenu being enlarged on bail is erroneous and is a flawed exercise and non-application of mind. Accordingly, he prayed to set aside the impugned preventive detention order.

8. Per contra, the learned Additional Public Prosecutor has submitted that the similar case and the ground case are registered under



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NDPS Act. Hence both the cases are broadly comparable. He has further submitted that in the ground case, investigation completed and final report filed and the same has taken on file in C.C.No.1242 of 2022 before the Special Court for NDPS Act cases, Madurai. Accordingly, he has prayed to dismiss the Habeas Corpus Petition.

9. We have carefully considered both side submissions.

10. In para (7) of the grounds of the impugned preventive detention order, the Detaining Authority has relied on a similar case bail order. In the said bail order case, the petitioner therein was charged under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act. The rigour stated under Section 37 of NDPS Act was not applicable while considering the bail plea therein. But, the ground case which is registered under Section 8(c) read with 20(b)(ii)(C), 29(1) of NDPS Act would pass the rigour under Section 37 of NDPS Act. It is apposite to state here Section 37 of NDPS Act which reads as follows:-

37. Offences to be cognizable and non-bailable. -- (1) Notwithstanding anything contained



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in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.



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11. Though this vital point ought to have been considered, the Detaining Authority failed to do so. Thus, non-application of mind is apparent on the face of record. Therefore, the subjective satisfaction recorded by the Detaining Authority is a flawed exercise. If it is flawed, the consequence is the impugned preventive detention order gets vitiated and deserves to be interfered with and set aside. Accordingly, we are inclined to interfere with the impugned preventive detention order.

12. We deem it fit and proper to state here that if the detainee moves for regular bail in the Trial Court, we make it clear that the Trial Court shall consider the bail petition on its own merits and in accordance with law [more particularly, NDPS Act and Section 37 thereat] untrammelled by this order which has been made in a habeas legal drill for the limited purpose of testing the impugned preventive detention order.

13. In the result, the captioned HCP is allowed. Impugned preventive detention order dated 12.04.2023 bearing reference H.S(M)Confdl.No.58/2023 made by the second respondent is set aside



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and the detenu Thiru.Ajan, male aged 25 years, son of Thiru.Arulappan,

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.)

17.11.2023

(2/2)

Index : Yes/No

Neutral Citation : Yes/No

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Post Script:

'(i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai;

(ii) Upload forthwith;

(iii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code;

(iv) Registry to take note of proceedings made by this Court in the previous listing on 18.10.2023;

(v) It is not clear as to whether Vakalatnama filed by Thiru.M.Maruthu Pandian has the consent of erstwhile counsel Thiru.A.Purantharadhas. Registrar (Judicial), Madurai Bench of Madras High Court, Madurai to enquire and submit a report;



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(vi) Complaints before the Bar council shall proceed in accordance with law and on their own merits.'

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
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Chennai – 9.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Inspector of Police,
South Police Station,
Thoothukudi.
- 4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.
- 5.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat,
Chennai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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