



HCP(MD)No.763 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

HCP(MD)No.763 of 2023

S.Saravani

... Petitioner

vs.

1. State, Rep. by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

2. The District Collector / District Magistrate,
Tenkasi District,
Tenkasi.

3. The Superintendent,
Central Prison,
Palaymakottai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, to call for the record on the file of the 2nd respondent in connection with the detention order passed vide his proceedings in No.M.H.S.Confdl No.27/2023 dated 18.04.2023 and set aside the same and direct the respondents to produce the detenu Thiru.Mathavan S/o.Sudalaimuthu aged 33 years who has been termed as "Sexual Offender" now confined in Central Prison, Palayamkottai before this Court and set the detenu at liberty.



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For Petitioner : Mr.M.Raja Ravi Varma
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 convenience and clarity] has been filed by mother of the detenu assailing the 'preventive detention order dated 18.04.2023 bearing reference No.M.H.S.Confdl No.27/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, sponsoring authority has not been arrayed as a respondent and we find that Station House Officer of Tenkasi All Women Police Station is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and the second respondent is the detaining authority as the impugned preventive detention order has been made by second respondent.

2. Captioned HCP was listed for admission on 28.06.2023 and Hon'ble predecessor Bench made the following order:

'H.C.P.No.763 of 2023

R.SURESH KUMAR, J.

and

K.K.RAMAKRISHNAN, J.



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Admit.

Mr.A.Thiruvadi Kumar learned Additional Public Prosecutor takes notice for the respondents and seeks time for filing counter.

Post the matter after six weeks.'

3. 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] on the premise that the detenu is a 'Sexual Offender' within the meaning of Section 2(ggg) of Act 14 of 1982.

4. There is no adverse case. This solitary case which is the sole substratum of impugned preventive detention order is ground case qua the detenu for alleged offence under Section 366 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Section 6 read with 5(g), 5(l) of Protection of Children from Sexual Offences Act, 2012 [hereinafter 'POCSO Act' for brevity] in Crime No.3 of 2023 on the file of Tenkasi All Women Police Station.



5. Mr.M.Raja Ravi Varma, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, for all the respondents are before us.

6. In the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 6 of the grounds of detention and the relevant portion reads as follows:

'6.... I am also aware that in a similar case bail has been granted to Ganesan in CRL MP No.762/2021 on 27.05.2021 by the Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli. I therefore infer that there is very likely of Thiru.Mathavan coming out on bail in Tenkasi All Women Police Station Crime No.03/2023 since bails are granted by the appropriate courts in such cases.'

7. Learned counsel submitted that aforementioned bail order in '*Ganesan vs State*' [hereinafter '*Ganesan's case* bail order' for the sake of



convenience] has been furnished to the detenu as part of the grounds booklet. Adverting to the aforementioned *Ganesan's case* bail petition as well as bail order thereat i.e., *Ganesan's case* bail order in the grounds booklet, learned counsel submitted that the aforementioned bail order dated 27.05.2021 made by learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli, is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the subjective satisfaction [qua imminent possibility of detenu being enlarged on bail] arrived at by the Detaining Authority is impaired.

8. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases i.e., ground case and *Ganesan's case* bail order are broadly comparable.

9. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of an arithmetic exercise i.e., numeric statutory expression and there is no



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discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.

10. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 18.04.2023 bearing reference No.M.H.S.Confdl No.27/2023 made by the detaining authority is set aside and the detenu Thiru.Mathavan aged 33 years, son of Thiru.Sudalaimuthu, 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.)
12.10.2023

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



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To

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

2. The District Collector / District Magistrate,
Tenkasi District,
Tenkasi.

3. The Superintendent,
Central Prison,
Palaymakottai.

4. 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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ORDER MADE IN
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DATED : 12.10.2023