



H.C.P(MD)No.729 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.729 of 2023

Muthulakshmi

.. Petitioner

VS

1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

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

3.The Superintendent of Prison,
Special Prison for Women,
Madurai 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 Detention Order BCDFGISSSV No.16 of 2023 dated 02.05.2023 and quash the same and direct the respondents to produce the body or person



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of the detenu by name Muthulakshmi, wife of Pathivuraja, aged about 58 years, now detained as “Drug Offender” at Madurai Special Prison for Women before this Court and set her at liberty forthwith.

For Petitioner : Mr.S.Ramesh Kumar
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 02.05.2023 bearing BCDFGISSSV No.16 of 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 but we find that Station House Officer of Checkkanurani 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 'Drug Offender' within the meaning of Section 2(e) of Act 14 of 1982.

3.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.123 of 2023 on the file of Checkkanurani Police Station for the alleged offences under Section 8(c) read with 20(b)(ii)(B) of 'Narcotic Drugs and Psychotropic Substances, Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience and clarity]. 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.



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

5.Captioned HCP was listed in the Admission Board before another Coordinate Hon'ble Division Bench on 22.06.2023 and an order was made in the Admission Board and a scanned reproduction of the same is as follows:-



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R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.

Admit.

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

Post the matter after... Six...
weeks.

[R.S.K., J.] & [K.K.R.K., J.]

02/06/2023



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6. Now in the final hearing Board today, learned counsel for

WEB CHCPY petitioner 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 flawed. To buttress this argument, learned counsel for petitioner drew our attention to a portion of paragraph 5 of the grounds of impugned preventive detention order which reads as follows:

'5.....In a similar case registered in Alanganallur Police Station in Crime No.91 of 2022, under Section 8(c) read with 20(b)(ii)(B), 25 of NDPS Act, bail was granted to the accused Ajaykumar, S/o.Kannaiah by the Principal Special Court for EC & NDPS Act Cases, Madurai on 13.05.2022 vide Crl.M.P.No.665 of 2022.

Therefore, there is a real possibility of Muthulakshmi coming out on bail in ground case of Checkkanurani Police Station Crime No.123 of 2023, under Section 8(c) read with 20(b)(ii)(B) of NDPS Act. Hence, I infer that it is very likely of her coming out on bail in the ground case by filing bail petition before the concerned Court.'

7.Adverting to the aforementioned portion of the grounds of the impugned preventive detention order, learned counsel for petitioner



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submitted that the detaining authority has relied on 'bail order dated 13.05.2022 made in CrI.M.P.No.605 of 2022 on the file of Principal Special court for Trial of Narcotic Drugs and Psychotropic Substances Act Cases, Madurai' [hereinafter Ajaikumar's bail order for the sake of brevity].

8.Learned counsel for petitioner submitted that Ajaikumar's bail order has been furnished to the detenu as part of the grounds booklet and a careful perusal of the same brings to light that in Ajaikumar's case, the petitioner did not have any previous case i.e., there was no bad antecedents for Ajaikumar, whereas in the case on hand, even according to the impugned preventive detention order there are two adverse cases. Therefore, the comparison is bad/flawed is learned counsel's say.

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



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10.Learned Prosecutor submitted that the alleged offences in

WEB C Ajaikumar's case and the ground case are broadly comparable.

11.We have carefully considered the rival submissions.

12.This Court has repeatedly held that as regards comparing a ground case with another case bail order it is not merely the alleged offences but it is the determinants/parameters which weighed in the mind of the bail Court for granting discretionary relief of bail. In this view of the matter, it is clear that in Ajaikumar's case, one of the main determinants that has weighed in the mind of the bail Court to grant the discretionary relief of bail is, Ajaikumar did not have bad antecedents i.e., there was no previous case for Ajaikumar whereas in the case on hand even according to the detaining authority, even if one goes by the impugned preventive detention order there are two adverse cases for the detenu. Therefore, we have no difficulty in sustaining the submission of learned counsel for petitioner that the subjective satisfaction arrived at by the detaining authority qua imminent possibility of detenu being enlarged on bail is flawed. If such subjective satisfaction is flawed, the



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consequence is the impugned preventive detention order gets vitiated and becomes liable for being dislodged in a habeas legal drill. This means that the impugned preventive detention order in the captioned HCP also deserves to be dislodged in the habeas legal drill on hand.

13.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.05.2023 bearing BCDFGISSSV No.16 of 2023 made by the second respondent is set aside and the detenu Tmt.Muthulakshmi, aged 58 years, wife of Thiru.Pathivuraja, 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 Women Special Prison, Madurai.



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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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