



HCP(MD)No.737 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.10.2023

CORAM :

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

HCP(MD)No.737 of 2023

Archana

... Petitioner

vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2. The Commissioner of Police,
Tiruchirapalli City,
Tiruchirapalli.

3. The Superintendent of Prison,
Trichy Central Prison,
Tiruchirapalli.

... Respondents

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 respondent No.2 in C.No. 31/Detention/C.P.O/T.C/2023 dated 25.04.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Ilayaraja, son of Balu aged about 41 years, now detained in Trichy Central Prison before this Court and set him at liberty forthwith.



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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 convenience and clarity] has been filed by the wife of the detenu assailing the 'preventive detention order dated 25.04.2023 bearing reference C.No.31/Detention/C.P.O/T.C/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 Palakkarai Police Station is the sponsoring authority [hereinafter 'sponsoring authority' for convenience and brevity] and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

2. Captioned HCP was listed for admission on 23.06.2023 and a coordinate Hon'ble predecessor Bench made the following order 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.Thiruvadikumar,

learned Additional Public Prosecutor
takes notice for the respondents and
seeks time for filing counter.

Post the matter after.....2.....

weeks.


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

23.06.2023



3. Impugned preventive detention order has been made branding the detenu as 'Goonda' within the meaning of Section 2(f) of '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].

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

5. In the support affidavit *qua* captioned HCP, several grounds have been raised. However, learned counsel for HCP petitioner in the final hearing board predicated his campaign against 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. In support of his argument, learned counsel



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drew our attention to a portion of paragraph 5 of the impugned preventive detention order which reads as follows:

'5. In a similar case registered in Ariyamangalam PS Cr.No.933/2022 u/s 394 r/w 397 IPC bail was granted to the accused Bharathi who was remanded on 26.08.2022 by the Principal District and Sessions Judge, Tiruchirappalli in Cr.M.P.No. 3863/2022, dated 12.09.2022. Hence, I infer that it is very likely of Ilayaraja coming out on bail in this case.'

6. Furthering his argument in this direction, learned counsel submitted that Bharathi's case bail order has been furnished to the detenu as part of the grounds booklet. The grounds booklet was placed before us and advertent to the same, learned counsel submitted that in Bharathi's case, learned Public Prosecutor had made a submission that no previous case is pending against the petitioner therein. In contradistinction, in the case on hand, even according to the grounds of impugned preventive detention order, there are at least two adverse cases and therefore, the comparison is bad and the subjective satisfaction is flawed is learned counsel said.



7. In response to the aforementioned argument, learned Prosecutor submitted that alleged offences in the ground case and Bharathi's case are broadly comparable.

8. We considered the rival submissions.

9. This Court has repeatedly held that as regards the subjective satisfaction pertaining to imminent possibility of detenu being enlarged on bail, it is not a comparison of mere alleged offences or charges but it is also a comparison of determinants / parameters which have weighed in the mind of the bail court in granting the discretionary relief of bail. In this view of the matter, we have no difficulty in sustaining the submission of learned counsel for HCP petitioner that the comparison of ground case with Bharathi's case is clearly flawed as in Bharathi's case, the petitioner had no previous case whereas, in the case on hand there are at least two adverse cases qua the detenu even according to the impugned preventive detention order.

10. If the subjective satisfaction arrived at by the detaining authority *qua* a preventive detention order is flawed, the consequence is



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the same becomes liable and vulnerable for being dislodged in a habeas legal drill.

11. From the narrative thus far, it is clear that the case on hand is one such case.

12. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 25.04.2023 bearing reference C.No. 31/Detention/C.P.O/T.C/2023 made by the second respondent is set aside and the detainee Thiru.Ilayaraja, aged about 41 years, son of Thiru.Balu 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.

Index : Yes
Neutral Citation : Yes
bala

(M.S., J.) (R.S.V., J.)
16.10.2023

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



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To

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State of Tamil Nadu,
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2. The Commissioner of Police,
Tiruchirapalli City,
Tiruchirapalli.

3. The Superintendent of Prison,
Trichy Central Prison,
Tiruchirapalli.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

bala

ORDER MADE IN
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DATED : 16.10.2023