



H.C.P(MD)No.858 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.858 of 2023

N.Ravi

.. Petitioner

vs

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

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

3.The Superintendent of Police,
Central Prison,
Palayamkottai.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus to call for the records on the file of the second respondent in connection with the impugned detention order passed vide his proceedings in No.H.S(M)Confdl No.61/2023 dated 17.04.2023 and set aside the same and direct the respondents herein to produce the detenu, Rahul Valavan, son of N.Ravi,



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aged 22 years, who has been termed as “Goonda”, now confined at Central Prison, Palayamkottai before this Court and set the detenu at liberty.

For Petitioner : Mr.M.Raja Ravi Varma
for Mr.C.Christopher

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 father of the detenu assailing a 'preventive detention order dated 17.04.2023 H.S(M)Confdl No.61/2023' [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 Thiruchendur 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 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3. There are three adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.109 of 2023 on the file of Thiruchendur Police Station for the alleged offences under Sections 294(b), 353 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 3 of 'Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992' [hereinafter 'TNPPDL Act' for the sake of convenience and clarity]. Considering the nature of the challenge to the impugned



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preventive detention order, it is not necessary to delve into the factual matrix of the case.

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

5.In the support affidavit qua captioned HCP several points have been raised but in the final hearing Board learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on the point that the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired.

6.Elaborating on this point, learned counsel for petitioner submitted that the subjective satisfaction has been arrived at by comparing the ground case with a case where TNPPDL Act is not one of the alleged offences.



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7.In this regard, learned counsel for petitioner drew our attention to a portion of paragraph 7 of the grounds of the impugned preventive detention order which reads as follows:

'7.I am aware that the accused Rahulvalavan was arrested in the ground case on 19.03.2023 and produced before the Court of Judicial Magistrate, Tiruchendur on the same day and forwarded to judicial custody up to 30.03.2023 and lodged in Central Prison, Palayamkottai. Further his remand was extended up to 21.04.2023. I am also aware that accused Rahulvalavan has filed bail petition in the ground case registered in Triuchendur Police Station Crime No.109 of 2023 under Sections 294(b), 353, 506(ii) IPC & 3 of TNPPDL Act, 1992 before the Principal Sessions Court, Thoothukudi vide Cr.M.P.No.2125 of 2023 dated 05.04.2023 and that is pending. I am also aware that in a similar case registered in Thoothukudi South Police Station Crime No.596 of 2022 under Sections 294(b), 353, 307, 506(ii) IPC bail was granted by the Principal Sessions Court, Thoothukudi to accused Rathinaharish in Cr.M.P.No.6766 of 2022 dated 28.11.2022. I therefore infer that there is a real possibility of his coming out on bail in the above case, since bails are granted by Courts in such cases. If he comes out on bail, he will indulge in such further activities.....'



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8.The aforementioned portion of the grounds of the impugned preventive detention order speaks for itself is the learned counsel's say.

9.In response to this argument, learned Prosecutor submitted that other than TNPPDL Act offences, the other alleged offences are broadly comparable.

10.We have carefully considered the rival submissions.

11.We find that the comparison does not pass muster as regards subjective satisfaction parameters. The reason is TNPPDL Act is a special enactment and absent any alleged offence/charge under a special enactment, the comparison reminds one of the age old adages of 'comparing apples and oranges' and 'comparing cheese and chalk'. This is one such case and therefore, we have no hesitation in saying that the impugned preventive detention order deserves to be dislodged in the habeas legal drill on hand.



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12.Ergo, the sequitur is, captioned HCP is allowed.

Impugned preventive detention order dated 17.04.2023 bearing H.S(M)Confdl.No.61 of 2023 made by the second respondent is set aside and the detenu Thiru.Rahulvalavan, aged 22 years, son of Thiru.N.Ravi, 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

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



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

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