



H.C.P(MD)No.859 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**

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Sunitha

.. 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,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison,
Madurai.

.. 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 pertaining to the impugned detention order passed by the second respondent made in his proceedings in M.H.S.Confdl.No.54 of 2023 dated 21.05.2023 in detaining the detenu under Section 2(f) of the Tamil



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Nadu Act, 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu namely Selvaraj @ Rasu, son of Chelladurai, male, aged about 33 years, who is detained at Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.C.Gangai Amaran
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 wife of the detenu assailing a 'preventive detention order dated 21.05.2023 bearing M.H.S.Confdl.No. 54 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 Vickiramasingapuram 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 is one adverse case and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.104 of 2023 on the file of Vickiramasingapuram Police Station for the alleged offences under Sections 147, 148, 341, 294(b), 307, 342, 324, 323 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and subsequently, altered into Sections 147, 148, 341, 294(b), 307, 342, 324, 323, 506(ii) and 120-B of IPC and again altered into Sections 147, 148, 341, 294(b), 302, 342, 324, 323,



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506(ii) and 120-B of IPC. 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.

4.Mr.C.Gangai Amaran, 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 13.07.2023 and an order was made in the Admission Board and a scanned reproduction of the same is as follows:-



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thiruvaidikumar
Learned Additional Public Prosecutor,
takes notice for the respondents. He
seeks time to file counter affidavit.

Post after 8/8 weeks.

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

13.07.2023



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6. Now in the final hearing Board today, learned counsel for HCP 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 6 of the grounds of impugned preventive detention order which reads as follows:

'6..... I am also aware that in a similar case bail has been granted to Manikandan alias Mani in Cr.M.P.No.1805 of 2018 on 09.04.2018 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of Thiru.Vaithiyalingam alias Rasu coming out on bail in Vickiramasingapuram Police Station Crime Number 104/2023; since bails are granted by the appropriate Courts in such cases. If he comes out on bail, he will indulge in further activities in future, which will be pre-judicial'



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7. Adverting to the aforementioned portion of the grounds of the impugned preventive detention order, learned counsel for petitioner submitted that the detaining authority has relied on 'bail order dated 09.04.2018 made in Cr.M.P.No.1805 of 2018 on the file of Principal Sessions Court, Tirunelveli' [hereinafter Manikandan @ Mani's bail order or Manikandan's bail order for the sake of brevity].

8. Learned counsel for petitioner submitted that Manikandan'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 Manikandan's case, the petitioner did not have any previous case i.e., there was no bad antecedents for Manikandan whereas in the case on hand, even according to the impugned preventive detention order there is at least one adverse case. 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

Manikandan'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 Manikandan'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 that Manikandan did not have bad antecedents i.e., there was no previous case for Manikandan whereas in the case on hand even according to the detaining authority, even if one goes by the impugned preventive detention order there is atleast one adverse case 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



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subjective satisfaction is flawed the 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 21.05.2023 bearing M.H.S.Confdl.No.54 of 2023 made by the second respondent is set aside and the detenu Thiru.Selvaraj @ Rasu, aged 33 years, son of Thiru.Chelladurai, 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 Central Prison, Madurai.



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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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