



H.C.P(MD)No.936 of 2023

BEFORE THE MADURAI BENCH OF MARDAS HIGH COURT

DATED: 03.10.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.936 of 2023

Nagamani,
W/o.Santhanamarimuthu alias Kokkikumar,
Pekovil Street,
Keelanatham,
Tirunelveli District. .. Petitioner/Wife of Detenu

VS

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.

2.The District Collector and District Magistrate,
District Collector Office,
Tirunelveli,
Tirunelveli District.

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 detention order in No.M.H.S.Confdl No.34/2023 dated 02.04.2023 passed by the second respondent and set aside the same by setting the detenu



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namely Santhanamarimuthu alias Kokkikumar, son of Pechimuthu, aged 26 years and set him at liberty, now detained at Central Prison, Madurai District.

For Petitioner : Mr.K.Sivabalan
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

This 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the wife of the detenu assailing a 'preventive detention order dated 02.04.2023 bearing reference No.M.H.S.Confdl No. 34/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, second respondent is the detaining authority as impugned preventive detention order has been made by second respondent. To be noted, sponsoring authority has not been arrayed as a respondent but we find that Station House Officer of Thalaiyuthu Police Station is the sponsoring authority [hereinafter 'Sponsoring Authority' for the sake of convenience and clarity].

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



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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 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.68 of 2023 on the file of Thalaiyuthu Police Station for alleged offences under Sections 294(b), 323, 324, 307 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. Considering to the nature of the challenge to the impugned detention order, it is not necessary to delve into the factual matrix of the case.

4. Mr.K.Sivabalan, 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 admitted by a Hon'ble Co-ordinate Bench in and by Admission Board order dated 28.07.2023.



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6.Today, in the final hearing Board, Mr.K.Sivabalan, learned counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on one point and that one point is subjective satisfaction arrived at by the detaining authority as regards imminent possibility of the detenu being enlarged on bail is impaired. Elaborating his submission in this direction, learned counsel for petitioner drew our attention to a portion of paragraph No.6 of grounds of impugned preventive detention order which reads as follows:

'6..... In this case he has filed a bail petition before the Principal Sessions Court, Tirunelveli in Cr.M.P.No.4486/2023 on 30.03.2023 and the bail petition is yet to be disposed. I am also aware that he is very likely to come out on bail in that case. I am also aware that he is very likely to come out on bail in that case.....'

7.Adverting to the aforementioned portion of paragraph No.6 of grounds of impugned preventive detention order, learned counsel for petitioner submitted that the detaining authority has relied on 'bail order dated 20.03.2023 made in CrI.M.P.No.3683 of 2023 on the file of Principal Sessions Court, Tirunelveli' (hereinafter Suresh @ Sudalaikannu's bail order or Suresh's bail order for the sake of brevity).



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8.Learned counsel for petitioner submitted that Suresh's bail order has been furnished to the detenu as part of the grounds booklet and a perusal of the same shows that learned Public Prosecutor has said that no serious objection is raised and it is on this basis that bail has been granted in Suresh's case. Therefore, the comparison is bad and the subjective satisfaction is bad is the learned counsel's say.

9.In response to the above argument, learned Additional Public Prosecutor submitted that in Suresh's case, the alleged offences are broadly comparable with ground case. There was no previous case and the petitioner had not come to the adverse notice of the police and therefore, learned Public Prosecutor said there is no serious objection is learned Prosecutor's further say.

10.We carefully considered the rival submissions.

11.We find that comparison of the detenu's case with that of Suresh's case bail order is clearly impaired as the parameters and determinants for grant of bail are very different as between the two i.e., bail order and bail plea in ground case. The comparison with a similar case should be as regards determinants/parameters too.



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12.This Court has repeatedly held that when it comes to subjective satisfaction of the detaining authority as regards imminent possible of detenu being enlarged on bail it is not just comparison of the alleged offence but it is also comparison of determinants/parameters for grant of bail which is a discretionary relief. In this view of the matter, Suresh's case is clearly not comparable with the case on hand as in Suresh's case, the prosecutor has said he has no serious objection in grant of bail to Suresh as is evident from what has been recorded by learned Principal Sessions Judge, Tirunelveli in Suresh's case bail order which has been furnished to the detenu as part of the ground booklet. The submission of learned Prosecutor that in Suresh's case, there was no previous case i.e., no antecedents and therefore, the Prosecutor said no objection, does not weigh with us. This Court is of the view that the comparison is bad as in the case on hand even according to the grounds of impugned preventive detention order, there are as many as three adverse cases, whereas according to learned Prosecutor, there was no adverse case i.e., no antecedents in Suresh's case. On this factum also, this Court is of the view that the comparison is bad.



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13.The sum sequitur of narrative and dispositive reasoning thus far is, impugned preventive detention order is vitiated and becomes liable for being dislodged in this habeas legal drill.

14.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 02.04.2023 bearing reference M.H.S.Confdl No.34/2023 made by the second respondent is set aside and the detenu Santhanamarimuthu alias Kokkikumar, son of Pechimuthu, aged 26 years, 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.)
03.10.2023

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, Madurai.



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To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 9.
- 2.The District Collector and District Magistrate,
District Collector Office,
Tirunelveli,
Tirunelveli District.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
R.SAKTHIVEL, J.,

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