



HCP(MD)No.1085 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2023

CORAM :

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

HCP(MD)No.1085 of 2023

P.Neelavathi

... Petitioner

vs.

1. State of Tamil Nadu
Rep. by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2. The District Collector and District Magistrate,
Tiruvarur District, Tiruvarur.

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

... 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 passed in C.O.C.No.45 of 2023 dated 14.06.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son i.e., Murali, aged about 25 years, S/o. Pakkirisamy, now detained at the Central Prison, Trichy, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.N.Pragalathan
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 mother of the detenu assailing the 'preventive detention order dated 14.06.2023 bearing reference C.O.C.No.45 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 and we find that Station House Officer of Kudavasal 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 29.08.2023 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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M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

Admit.

Mr. A. Thiruvadi Kumar,
learned Additional Public Prosecutor,
takes notice for the respondents. He
seeks time to file counter affidavit.

Post after *six* weeks.

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

29.08.2023



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3. Impugned 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.

4. In the final hearing board, Mr.N.Pragalathan, learned 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, though very many points have been raised, in the final hearing board, learned counsel predicated his campaign agianst the impugned preventive detention order on one point and that one point turns on non application of mind qua detaining authority in making the impugned preventive detention order.



Learned counsel elaborating on this point submitted that non application of mind turns on subjective satisfaction recorded by detaining authority as regards imminent possibility of detenu being enlarged on bail. In this regard, learned counsel drew our attention to a portion of paragraph 4 which reads as follows:

'4) I am aware that Thiru.Murali, Male, aged 25/2023, S/o. Pakkirisamy was produced before the learned Judicial Magistrate, Tiruvarur in Kudavasal Police Station Cr.No.269/2023 u/s 294(b), 324, 506(ii), 307 IPC and was remanded to Judicial custody and lodged at District Jail, Nagapattinam on 24.05.2023. His remand period was upto 07.06.2023. Further, his remand period has been extended upto 21.06.2023. His bail petition filed before the Judicial Magistrate Court, Tiruvarur was dismissed in Cr.M.P. No.2942/2023, dated 25.05.2023. Further, his bail petition filed before the Principal District and Sessions Court, Tiruvarur was pending in Cr.M.P. No.860/2023, dated 01-06-2023.'

6. Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that the detaining authority has categorically noted the point that the detenu has filed the bail petition qua the ground case in the Principal District and Sessions Court, Tiruvarur [Cr.M.P.No.860/2023] and the same is pending



but thereafter in the very same paragraph 4, the detaining authority has recorded the subjective satisfaction as regards the imminent possibility of detenut being enlarged on bail by saying that there is a real possibility of detenu coming out on bail by filing a bail application for the above case in an appropriate Court and higher Court. This portion of paragraph 4 reads as follows:

'.... Hence, I infer that there is real possibility of (Thiru. Murali, Male, aged 25/2023, S/o. Pakkirisamy) coming out on bail by filing a bail application for the above case before the appropriate Court and higher Court. ...'

7. In response to the aforementioned argument, learned Prosecutor submitted that the pendency of a bail petition filed by the detenu is certainly good enough for detaining authority to record subjective satisfaction.

8. We carefully considered the rival submissions.

9. The point is not whether there is pendency of bail petition filed by the detenu in the ground case. The point is while the bail



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petition is pending in the appropriate Court in the ground case, after noticing the pendency of the bail petition and giving particulars with granularity such as, Cr.M.P number and the date [alluded to supra], has recorded subjective satisfaction by saying that there is imminent possibility of detenu being enlarged on bail by filing bail petition in the appropriate Court and higher Court. The question of filing another bail petition or approaching another higher Court as referred to by the detaining authority in the aforementioned paragraph 4 does not arise when a bail petition is pending. To this extent, we have no difficulty in sustaining the submission of the learned counsel for petitioner that the impugned preventive detention order is vitiated by the vice of non application of mind qua detaining authority.

10. The impugned preventive detention order is vitiated on the ground of non application of mind qua detaining authority and therefore, it is liable to be dislodged in this habeas legal drill.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.06.2023 bearing reference C.O.C.No. 45 of 2023 made by the second respondent is set aside and the detenu



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Thiru.Murali son of Thiru.Pakkirisamy, aged 25 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.)
18.10.2023

Index : Yes
Neutral Citation : Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2. The District Collector and District Magistrate,
Tiruvarur District, Tiruvarur.

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

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

5. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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

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ORDER MADE IN
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DATED : 18.10.2023