



H.C.P(MD)No.1099 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **07.11.2023**

Coram

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

H.C.P(MD)No.1099 of 2023

Kannan @ Mannennai Kannan

.. 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,
Office of the Commissioner of Police,
Madurai City, Madurai.

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

.. Respondents

Prayer:- 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 No. 54/BCDFGISSSV/2023 dated 07.07.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Kannan @ Mannennai Kannan, son of Meenatchisundaram, aged about 44 years, now detained as “Goonda” at Madurai Central Prison before this Hon'ble Court and set him at liberty forthwith.



H.C.P(MD)No.1099 of 2023

For Petitioner : Mr.S.RameshKumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed in the Admission Board on 01.09.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:



2. It has now become necessary to set out a thumb nail sketch of factual matrix and we do so in the paragraphs infra.



H.C.P(MD)No.1099 of 2023

3. Today, the captioned matter is in the Final Hearing Board.

WEB COPY

4. Mr.S.RameshKumar, 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 has been filed by the detenu assailing a 'preventive detention order dated 07.07.2023 bearing No. 54/BCDFGISSSV/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 D1 Tallakulam 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.

6. 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



H.C.P(MD)No.1099 of 2023

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.

7. 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.618 of 2023 on the file of D1 Tallakulam Police Station registered under Sections 364A, 342, 294(b) and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Section 4 Tamil Nadu Prohibition of Harassment of Women Act, 2002. 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.

8. 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 5 of the grounds of impugned preventive detention order which reads as follows:

'5..... Further, I am aware that conditional bail



WEB COPY



H.C.P(MD)No.1099 of 2023

was granted by the Principal Sessions Judge, Madurai in Crl.M.P.No.3230 of 2023 on 20.06.2023 to Balasubramani @ Bala, co-accused of Kannan @ Mannennai Kannnan in the above said ground case.

Hence, I am satisfied that there is a real possibility of his (Kannan @ Mannennai Kannan, S/o.Meenatchisundaran) coming out on bail by filing bail application before the Court concerned in the ground case, since Balasubramani @ Bala, co-accused of Kannan @ Mannennai Kannan, was granted bail in the above said ground case, by the Court concerned.....'

9. 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 20.06.2023 made in Cr.M.P.No.3230 of 2023 on the file of Principal Sessions Judge, Madurai' [hereinafter Balasubramani @ Bala's bail order for the sake of brevity].

10. Learned counsel for petitioner submitted that Balasubramani @ Bala'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 Balasubramani @ Bala's case, the petitioner did not have any previous case i.e., there was no bad antecedents for Balasubramani @ Bala, whereas in the case on hand, even according to the impugned preventive detention order



there is one adverse case. Therefore, the comparison is bad/flawed is learned counsel's say.

11. In response to the above argument, learned Prosecutor submitted to the contrary.

12. Learned Prosecutor submitted that the alleged offences in Balasubramani @ Bala's case and the ground case are broadly comparable.

13. We have carefully considered the rival submissions.

14. 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 Balasubramani @ Bala'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, Balasubramani @ Bala did not have bad antecedents i.e., there was no previous case for Balasubramani @ Bala whereas in the case on hand even according to the detaining authority, even if one goes by the impugned



H.C.P(MD)No.1099 of 2023

preventive detention order there is 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 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.

15. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 07.07.2023 bearing No.54/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Kannan @ Mannennai Kannan, aged 44 years, son of Meenatchisundaram, 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.)

07.11.2023

vsm

Index : Yes

Neutral Citation : Yes

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



H.C.P(MD)No.1099 of 2023

WEB COPY

- To
- 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,
Office of the Commissioner of Police,
Madurai City, Madura.
 - 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
 - 4.Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



H.C.P(MD)No.1099 of 2023

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

vsm

H.C.P(MD)No.1099 of 2023

07.11.2023