



H.C.P(MD)No.1106 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **18.10.2023**

Coram

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

H.C.P(MD)No.1106 of 2023

V.Mariappan

.. Petitioner

VS

1.State of Tamil Nadu,
Rep. By 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,
Palayamkottai,
Tirunelveli.

.. 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 passed in M.H.S.Confdl No.63/2023 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



H.C.P(MD)No.1106 of 2023

namely the petitioner's son ie., Selvakumar, aged about 22 years, S/o.Mariappan, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

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 brevity] has been filed by the father of the detenu assailing a 'preventive detention order dated 14.06.2023 bearing M.H.S.Confdl No.63 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 'Cheranmahadevi 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.



H.C.P(MD)No.1106 of 2023

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 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.114 of 2023 on the file of Cheranmahadevi Police Station for the alleged offences under Sections 147, 148, 294(b), 324, 307, 427 and 506(ii) of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]. 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.N.Pragalathan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



H.C.P(MD)No.1106 of 2023

5. Captioned HCP was listed in the Admission Board before another Coordinate Hon'ble Division Bench on 04.09.2023 and an order was made in the Admission Board and a scanned reproduction of the same is as follows:-



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



H.C.P(MD)No.1106 of 2023

preventive detention order which reads as follows:

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'5.....I am also aware that in a similar case bail has been granted to Murugaselvam alias Chella in Cr.M.P.No.6308 of 2020 on 26.11.2020 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is a real possibility of Thiru.Selvakumar coming out on bail in Cheranmahadevi Police Station Crime No. 114 of 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 to the maintenance of the public order.....'

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 26.11.2020 made in Cr.M.P.No.6308 of 2020 on the file of Principal Sessions Court, Tirunelveli' [hereinafter Murugaselvam's bail order for the sake of brevity].

8. Learned counsel for petitioner submitted that Murugaselvam'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 Murugaselvam's case, the petitioner did not have any previous case i.e., there was no bad antecedents for Murugaselvam, whereas in the case on hand, even according to the



H.C.P(MD)No.1106 of 2023

impugned preventive detention order there are two adverse cases. Therefore, the comparison is bad/flawed is learned counsel's say.

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

10. Learned Prosecutor submitted that the alleged offences in Murugaselvam'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 Murugaselvam'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, Murugaselvam did not have bad antecedents i.e., there was no previous case for Murugaselvam whereas in the case on hand even according to the detaining authority, even if one goes by the impugned preventive detention order there are two adverse cases for the detenu. Therefore, we have no



H.C.P(MD)No.1106 of 2023

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.

13. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.06.2023 bearing M.H.S.Confdl No.63 of 2023 made by the second respondent is set aside and the detenu Thiru.Selvakumar, aged 22 years, son of Mariappan, 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/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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H.C.P(MD)No.1106 of 2023

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

vsm

To

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State of Tamil Nadu,
Home, Prohibition and Excise Department,
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- 2.The District Collector and District Magistrate,
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- 3.The Superintendent of Prison,
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Palayamkottai,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P(MD)No.1106 of 2023

18.10.2023