



HCP(MD)No.1122 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1122 of 2023

J.Anto

: Petitioner

Vs.

1.State of Tamil Nadu,

Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai – 600 009.

2.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

: Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the entire records connected with the detention order passed in P.D.No.42 of 2023 dated 12.08.2023 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's son ie., Kanstin Rabin @ Lux, aged about 22 years, S/o. Jesu Derosé, 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

O R D E R

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

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed in this Court on 04.09.2023.

2.Captioned HCP was listed in the admission board before Hon'ble Predecessor Coordinate Bench on 08.09.2023 and the following order was made:



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'Goonda' within the meaning of Section 2(f) of '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 brevity, convenience and clarity].

5.In the final hearing board, today, Mr.N.Pragalathan, learned Counsel for HCP petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for the respondents are before us.

6.In the support affidavit *qua* captioned HCP several points have been raised but learned Counsel for HCP petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction as regards imminent possibility of detainee being enlarged on bail has not been recorded by the detaining authority with regard to two adverse cases. It is to be noted that the substratum of the impugned preventive detention order is constituted by one ground case and two adverse cases and all these three cases have successive Crime numbers ie., Cr.Nos.181, 182 and 183 of 2023, all in the file of Kanniyakumari Police Station [Kanniyakumari District].



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7.Elaborating his submissions on the aforementioned point learned Counsel drew our attention to a portion of paragraph No.6 of impugned preventive detention order which reads as follows:

'6. ... Further, I infer that the accused Kanstin Rabin @ Lux is under judicial custody in the ground case in Kanniyakumari P.S. Cr.No.182/2023 u/s. 294(b), 324, 307, 506(ii) IPC and the previous cases in Kanniyakumari P.S. Cr.No. 181/2023 u/s. 294(b), 324, 307, 506(ii) IPC and Kanniyakumari P.S. Cr.No.183/2023 u/s. 341, 294(b), 324, 307 and 506(ii) IPC. AS far as the ground case is concerned, no bail application has been filed on behalf him in any of the court so far. In a similar case registered in Thucklay P.S. Cr.No.64/2021 u/s.341, 294(b), 307, 506(ii) IPC, the accused Mohamed Feroskhan was granted condition bail as per the orders of the Hon'ble Principal Sessions, Kanniyakumari District at Nagercoil issued in C.M.P.No.1370/2021 dated 08.03.2021. Since bail is granted in such cases by the Courts, the accused Kanstin Rabin @ Lux may file bail application in the lower court or higher court and there is a real possibility that he may come out on bail.'

8.Adverting to the aforementioned portion learned Counsel made two submissions and they are as follows:

i) Subjective satisfaction as regards imminent possibility of detainee being enlarged on bail has been recorded only with regard to the ground case and no such subjective satisfaction has been made with regard to the two adverse cases;

ii) The fact that detaining authority has recorded that no bail application has been filed by the detainee buttresses the first point as bail application has been filed in the



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adverse case [Crime No.181/2023] and the same was dismissed by learned Principal Sessions Judge, Kanyakumari vide order dated 02.08.2023 in CrI.M.P.No. 4102 of 2023.

9.In response to the aforementioned arguments, learned Prosecutor submitted that the offences are largely similar and therefore, subjective satisfaction as recorded will suffice.

10.We carefully considered the rival submissions.

11.As regards subjective satisfaction it is not merely comparison of the offence but the determinants / parameters also are relevant. In the case on hand as rightly contended by learned Counsel for HCP petitioner, with regard to first adverse case a bail petition has been filed and the same has been dismissed more so on the ground that preventive detention proceedings have been kick started whereas the subjective satisfaction has been recorded on the basis that no bail application has been filed by the detainee. No bail application has been filed by the detainee will apply only to the ground and the second adverse case and it will not apply to the first adverse case. In this view of the matter, considering the nature of the matter, we are



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inclined to hold that the subjective satisfaction is impaired resulting in impugned preventive detention order becoming vitiated and becoming liable for being dislodged.

12.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 12.08.2023 bearing reference P.D.No.42/2023 made by the second respondent is set aside and the detenu Thiru.Kanstin Rabin @ Lux, aged 22 years, son of Thiru.Jesu Deroose, 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.]

15.11.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. All concerned are to act on this order being uploaded in official website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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To

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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

MR

ORDER MADE IN
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15.11.2023