



H.C.P(MD)No.1222 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2023

CORAM :

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

H.C.P(MD)No.1222 of 2023

Kannan

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli District.
4. The Inspector of Police,
Cheranmahadevi Police Station,
Tirunelveli 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 of the 2nd respondent in Detention Order No. M.H.S.Confdl No.77/2023 dated 31.07.2023 and to quash the same and direct the respondents to produce the body or person of the



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detenu Baskar son of Kannan, aged about 25 years before the Court and set him at liberty, now detained as 'Goonda' at Central Prison, Palayamkottai.

For Petitioner : Mr.C.Saravanakumar

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 09.10.2023, a Hon'ble Coordinate Division Bench made the following order in the Admission Board:

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S.M.SUBRAMANIAM, J.
AND
Y.LAKSHMINARAYANAN, J.
(Order of the Court was made by
S.M.SUBRAMANIAM, J.)
Admit.
2. Mr.A.Thiruvadi Kumar,
learned Additional Public Prosecutor
takes notice for the respondents.
3. Post the matter after four
weeks.

[S.M.S.J.] & [Y.L.S.J.]
09.10.2023
S.I



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

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

4. Mr.C.Saravanakumar, 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 father of the detenu assailing a 'preventive detention order dated 31.07.2023 bearing No.M.H.S.Confdl No.77/2023' [hereinafter 'impugned preventive detention order' for the sake of brevity and convenience]. To be noted, the fourth respondent is the sponsoring authority and second respondent is the detaining authority as impugned preventive detention order has been made by second respondent.

6. In the support affidavit qua captioned HCP, several points have been raised but in the final hearing board, Mr.C.Saravanakumar, 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 impaired. Elaborating on this point, learned counsel drew our attention to a portion of paragraph (6) of the grounds of impugned preventive detention order which reads as follows:

'.....I am also aware that in a similar case bail has been granted to Nagarajan alias Mohaideen Nagarajan in Cr.M.P.No.8022/2019 on 20.08.2019 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is very likely of Thiru.Baskar coming out on bail in Cheranmahadevi Police Station Crime Number 187/2023; since bails are granted by the appropriate Courts in such cases.....'

7. Adverting to the aforementioned portion, learned counsel submitted that Nagarajan @ Mohaideen Nagarajan's case bail order has been made available to the detenu as part of the grounds booklet served on the detenu. This Court had the benefit of perusing the grounds booklet. Adverting to Nagarajan case bail order, learned counsel submitted that bail has been granted owing to the affidavit of the defacto



complainant which shows that the defacto complainant had nothing to do with the Nagarajan's case and that the defacto complainant signatures were obtained in some papers when he came to the police station for some other matter.

8. In reponse to the aforementioned argument, learned Prosecutor submitted that the alleged offences in the ground case and Nagarajan's case are broadly comparable.

9. We carefully considered the rival submission.

10. This Court has repeatedly held that when it comes to recording subjective satisfaction qua imminent possibility of detenu being enlarged on bail i.e., recording subjective satisfaction by comparing the case on hand with a similar case, the parameters and determinants which weighed in the mind of the bail Court for granting bail are very significant. In this view of the matter, we deem it appropriate to extract and reproduce a portion of the bail order i.e., bail order granted by the bail Court on 20.08.2019 reads as follows:



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'.....On perusal of the affidavit filed by the defacto complainant of this case it is seen that, when he was went to the police station to observe the condition, police obtained his signatures in some papers and registered this case and he is in no way connected with this case.....'

11. In our considered view, the aforementioned portion of the bail order is clinching as it is clear that the determinant that has weighed in the mind of the bail Court for grant of discretionary relief of bail is that the defacto complainant had nothing to do with the case that was registered and therefore it is clearly a foisted case. This means that the comparison of Nagarajan's case bail order with the case on hand is a flawed exercised which reminds one of the age old adages of 'comparing Apples and Oranges'. It further means that the subjective satisfaction is impaired as rightly argued by the learned counsel for HCP petitioner. It leads to the conclusion that the impugned preventive detention order is vitiated, it has become vulnerable and it is liable to be dislodged in the habeas legal drill on hand.



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12. Ergo, the sequitur is captioned HCP is allowed. Impugned preventive detention order dated 31.07.2023 bearing reference M.H.S.Confdl No.77/2023 made by the second respondent is set aside and the detenu Thiru.Baskar, Male, aged 25 years, son of Thiru.Kannan 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.)
09.11.2023

Index : Yes / No
Neutral Citation : Yes / No
PKN

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

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli District.
4. The Inspector of Police,
Cheranmahadevi Police Station,
Tirunelveli District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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

PKN

ORDER MADE IN
H.C.P(MD)No.1222 of 2023

DATED : 09.11.2023