



HCP(MD)No.1232 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1232 of 2023

Kalaimani

: Petitioner

Vs.

1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
For St. George,
Chennai – 600 009.

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

3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the second respondent made



HCP(MD)No.1232 of 2023

in his proceedings in P.D.No.54/2023 dated 13.09.2023 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the Detenu namely Chellappa S/o. Veeraiyan, Male, aged about 42 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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' [hereafter 'HCP' for the sake of brevity] was listed in the admission board on 11.10.2023 before this Bench and the following order was made:

'H.C.P(MD)No.1232 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR, J.,)

Captioned Habeas Corpus Petition has been filed in this Court on 06.10.2023 inter alia assailing a 'detention order dated 13.09.2023, bearing P.D.No.54 of 2023 [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of



HCP(MD)No.1232 of 2023

convenience].

2. To be noted, wife of the detenu is the petitioner.

3. Mr.K.M.Karunakaran, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 294(b), 324, 506(ii) and 302 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] in Crime No.272 of 2023 on the file of Ayyampettai Police Station.

4. The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under 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 convenience and clarity].

5. The impugned preventive detention order has been assailed inter alia on the ground that the Tamil translation of some of the documents have not been furnished.

6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four [4] weeks.

7. Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'



HCP(MD)No.1232 of 2023

WEB COPY

2.The aforementioned admission board order captures all essentials that are imperative for appreciating this final order and therefore we deem it appropriate to plunge into the legal drill of testing the impugned preventive detention order. Before we do so we make it clear that the aforementioned admission board order dated 11.10.2023 shall now be read as an integral part and parcel of this final order. This also means that the short forms, short references and abbreviations used in the Admission Board order dated 11.10.2023 will continue to be used in the instant final order also for the sake of convenience and clarity. As would be evident from paragraph No.5 of the admission board order, at the time of admission learned Counsel for HCP petitioner [to be noted, wife of the detenu is the HCP petitioner] posited his argument on the point that Tamil translation of some of the documents contained in the booklet were not furnished but today, learned Counsel changed his line of argument and predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction as regards imminent possibility of detenue being enlarged on bail is impaired. Elaborating his submission in this direction, learned Counsel drew the attention of this Court to a portion of paragraph No.5 of the grounds of impugned preventive detention order which reads as follows:



HCP(MD)No.1232 of 2023

'5) Moreover, in similar case registered in Nachiyarkovil Police Station Crime No.60/2022, Under Sections 147, 148, 294(b), 307 and 302 of Indian Penal Code condition bail was granted to the accused Santhosh by the Principal District and Sessions Court, Thanjavur in Criminal Miscellaneous Petition No.1445/2022, Dated: 28.03.2022. Hence, there is a real possibility of his (Thiru.Chellappa) coming out on bail by filing bail petition for the above said Ground case before the appropriate Court, since, bails are granted by the courts in such cases.'

3.Adverting to the aforementioned portion of the grounds of impugned preventive detention order learned Counsel submitted that **Santhosh's** case bail order has been furnished to the detenu as part of the grounds booklet. Adverting to **Santhosh's** case bail order, learned Counsel submitted that in **Santhosh's** case the co-accused was granted bail by High Court [to be noted, the bail Court is District and Sessions Judge's Court, Thanjavur]. Learned Counsel also pointed out that besides this the period of incarceration is another determinant. It was argued that co-accused being granted bail by the High Court and the period of incarceration are the determinants whereas such determinants are not available *qua* the ground case in the case on hand.

4.Learned Prosecutor in response to the submissions of the learned Counsel for petitioner submitted to the contrary. Learned



Prosecutor submitted that alleged offences in **Santhosh's** case and the ground case are broadly comparable.

5. We carefully considered the rival submissions.

6. This Court has repeatedly held that when it comes to subjective satisfaction *qua* imminent possibility of detinue being enlarged on bail and when it comes to recording of such subjective satisfaction when comparing the ground case with another case bail order it is not merely the comparison of the alleged offences but it is a comparison of the determinants and the parameters. In this regard, we deem it appropriate to extract and reproduce the following portion from **Santhosh's** case bail order:

'... Considering the fact that the petitioner herein / A5 is having the similar footing of A9 who has already let on bail by the Hon'ble High Court, period of incarceration and completion of material part of investigation, this Court is inclined to enlarge the Petitioner on bail.'

7. In the light of the aforementioned clear articulation by the bail Court with specificity we have no hesitation in sustaining the submission of learned Counsel for petitioner that the determinants and parameters for grant of bail in **Santhosh's** case are very different



HCP(MD)No.1232 of 2023

from the dynamics and dimensions of the ground case. This means the subjective satisfaction recorded by the detaining authority is impaired. If subjective satisfaction is impaired, impugned preventive detention order gets vitiated and becomes vulnerable for being dislodged in a habeas legal drill.

8.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 13.09.2023 bearing reference P.D.No.54/2023 made by the second respondent is set aside and the detenu Thiru.Chellappa, aged 42 years, son of Thiru.Veeraiyan, 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
Internet : Yes/No
Neutral Citation : Yes/No
MR

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Thiruchirappalli and District Jail, Pudukkottai. 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.



WEB COPY



HCP(MD)No.1232 of 2023

To

- 1.The Principal Secretary to Government,
Home Prohibition and Excise Department,
For St. George,
Chennai – 600 009.
- 2.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



HCP(MD)No.1232 of 2023

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

MR

ORDER MADE IN
H.C.P.(MD)No.1232 of 2023

09.11.2023