



H.C.P(MD)No.1267 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 18.12.2023

Coram

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

H.C.P(MD)No.1267 of 2023

Aasan

.. Petitioner/
brother of the detenu

VS

1.State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai – 9.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent,
Central Prison, Madurai.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus to call for the records pertaining to the proceedings of the second respondent made in his proceedings in Detention Order No.79/BCDFGISSSV/2023 dated 16.09.2023 and quash the same and set the petitioner's brother by name



H.C.P(MD)No.1267 of 2023

'Imrankhan @ Usain, Son of Abuthahir, aged about 25 years at liberty from Superintendent of Police, Central Prison, Madurai.

For Petitioner : Mr.C.Karthikeya

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by R.SAKTHIVEL, J.]

This 'Habeas Corpus Petition' [henceforth referred to as 'HCP'] has been filed in the Court on 12.10.2023 by the brother of the detenu assailing a 'preventive detention order dated 16.09.2023 bearing reference No.79/BCDFGISSSV/2023' [henceforth referred to as 'impugned preventive detention order']. To be noted, the second respondent is the Detaining Authority as the impugned preventive detention order has been made by him. The Inspector of Police, C2 Subramaniyapuram Police Station is the Sponsoring Authority [henceforth referred to as 'Sponsoring Authority'].

2. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of



H.C.P(MD)No.1267 of 2023

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)' [henceforth referred to as 'Act 14 of 1982'] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

3.At the time of admission, learned counsel for petitioner has raised a point that in the grounds booklet, several documents are in English language but Tamil translated version was not served on the detenu which prevented the detenu from making an effective representation.

4.The admission board order dated 31.10.2023 reads as follows:

'H.C.P(MD)No.1267 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

O R D E R

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



WEB COPY



H.C.P(MD)No.1267 of 2023

Captioned Habeas Corpus Petition has been filed in this Court on 12.10.2023 inter alia assailing a 'detention order dated 16.09.2023, bearing reference No. 79/BCDFGISSSV/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 convenience].

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

3.Mr.C.Prithviraj, 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) of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity] and subsequently altered into Sections 147, 148, 294(b), 324, 307 and 506(ii) IPC in Crime No.318 of 2023 on the file of C2, Subramaniyapuram 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 in the grounds booklet, several documents are in English language but Tamil translated version was not served on detenu which prevented the detenu from making an effective representation.

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



WEB COPY



H.C.P(MD)No.1267 of 2023

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

5.Today, in the final hearing board, learned counsel for petitioner raised a point that subjective satisfaction recorded by the detaining authority with regard to the third adverse case namely, Crime No:317/2023 on the file of C2 Subramaniyapuram Police Station is flawed. Elaborating the said point, learned counsel submitted that the detaining authority while recording subjective satisfaction has relied on a similar case bail order namely, co-accused R.Vignesh bail order. The said order is not similar to the third adverse case. Learned counsel drew our attention to a portion of paragraph 5 of grounds of the impugned preventive detention order which reads as follows:

'I am also aware that conditional bail was granted by the Principal Sessions Judge, Madurai in Crl.M.P.No.5187/2023 on 13.09.2023 to Vignesh, co-accused of Imrankhan @ Usain in the above said third adverse case in C2 Subramaniyapuram Police Station Crime No.317/2023.



H.C.P(MD)No.1267 of 2023

WEB COPY

*Hence, I am satisfied that there is a real possibility of his (**Imrankhan @ Usain, s/o.Abuthahir**) coming out on bail through the pending bail applications before the Court concerned in the ground case and third adverse case, since in a case similar to that of the ground case, bail has been granted by the court concerned and the co-accused of **Imrankhan @ Usain** was granted conditional bail in the third adverse case in the court concerned.'*

6.Learned counsel further submitted that copy of the similar case bail order namely, co-accused R.Vignesh case bail order which was passed by the learned Principal District and Sessions Judge, Madurai in Crl.M.P.No.5187 of 2022 dated 13.09.2023 has been furnished to the detenu at page no.272 as part of the grounds booklet. Further, learned counsel submitted that at the time of considering the bail plea to the co-accused R.Vignesh, he has no previous case and was a college student. In that effect, he had produced Student Identity Card. Considering the facts and circumstances of that case, learned Sessions Judge granted bail to R.Vignesh, petitioner therein. But, in the case on hand, detenu has three adverse cases and one ground case. Hence, the subjective satisfaction arrived at by the detaining authority that imminent



possibility of the detenu being enlarged on bail is flawed exercise and erroneous decision. Accordingly, he prayed to set aside the impugned preventive detention order.

7. Per contra, learned Additional Public Prosecutor for the respondents submitted that the offences under the similar case and the offences under the third adverse case are broadly comparable. Accordingly, he prayed to sustain the impugned preventive detention order.

8. We have considered both sides' submissions. The detenu has three adverse cases and one ground case. The bail was granted to the detenu in the first and second adverse cases. The third adverse case is in Crime No:317/2023 under Section 294(b), 364A, 323, 325 and 392 of IPC, on the file of C2 Subramaniyapuram Police Station. The earlier bail application filed by the detenu was dismissed in CrI.M.P.No.3705 of 2023 by the Judicial Magistrate Court No.IV, Madurai. The detenu filed another bail application before the Principal Sessions Court, Madurai in CrI.M.P.No.4843 of 2023 which was also dismissed on 31.08.2023. In these circumstances, the detaining authority recorded



H.C.P(MD)No.1267 of 2023

subjective satisfaction by relying on the co-accused R.Vignesh bail order.

9. Similar case bail petitioner namely, R.Vignesh was a college student and he had no previous case. The said aspects weighed the mind of the bail Court for granting bail to the petitioner therein namely, R.Vignesh. In the case on hand, the detenu has three adverse cases and one ground case. The detaining authority himself has stated the details of the adverse cases of the detenu in the grounds of detention. Hence, the subjective satisfaction arrived at by the detaining authority regarding the imminent possibility of the detenu being enlarged on bail would show his non-application of mind before passing the impugned preventive detention order. Hence, we are inclined to interfere with the impugned preventive detention order.

10. In the result, the captioned HCP is allowed. Impugned preventive detention order dated 16.09.2023 bearing reference No.79/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Imrankhan @ Usain, male aged 25 years, son of Thiru.Abuthahir, is directed to be set at liberty forthwith, if not required



H.C.P(MD)No.1267 of 2023

in connection with any other case / cases. There shall be no order as to

costs.

(M.S.,J.) (R.S.V.,J.)
18.12.2023

Index : Yes

Neutral Citation : Yes

ps / jen

Post Script:

(i) Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai.

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.

To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department, Chennai – 9.
- 2.The Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent, Central Prison, Madurai.
- 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

M.SUNDAR, J.,



WEB COPY



H.C.P(MD)No.1267 of 2023

and
R.SAKTHIVEL, J.,

ps / jen

H.C.P(MD)No.1267 of 2023

18.12.2023