



HCP(MD)No.1297 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2023

CORAM :

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

HCP(MD)No.1297 of 2023

Benasir

... Petitioner

vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600009.

2. The District Collector and District Magistrate,
District Collector and District Magistrate's office,
Thanjavur District.

3. The Superintendent of Prison,
Trichy Central Prison,
Trichy 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 respondent No.2 in P.D.No. 57/2023 dated 14.09.2023 and quash the same and direct the respondents to produce the body or person of the detenu by name Thulasi alias Thulasiraman, son of Periyasamy, aged about 43 years, now detained as 'Goonda' at Trichy Central Prison before this Court and set him at liberty forthwith.



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For Petitioner : Mr.S.Ramesh Kumar
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

This petition has been filed by the wife of the detenu on 25.10.2023 praying to quash the impugned preventive detention order passed by the 2nd respondent in P.D.No.57/2023 dated 14.09.2023.

2. The petitioner filed an affidavit in support of the petition wherein, she raised various numerous points questioning the impugned preventive detention order. Today, in the final hearing, learned counsel for petitioner has submitted that the subjective satisfaction arrived at by the 2nd respondent with regard to imminent possibility of the detenu being enlarged on bail is impaired. In support of his submission, learned counsel for the petitioner drew our attention to a portion of paragraph 5 of grounds of detention which reads as follows:

'... Moreover, in similar case registered in Thiruvudiamaurthur Police Station Crime No.630/2022, under sections 341, 294(b), 324 and 307 of Indian Penal Code condition bail



was granted to the accused Thiru. Prithivirajan and Sakthiprakash by the Principal District and Sessions Court, Thanjavur in Criminal Miscellaneous Petition No.3765/2022, Dated: 26.08.2022. Hence, there is a real possibility of his (Thiru. Thulasi alias Thulasiraman) coming out on bail by filing another bail petition for the above said Ground case before the appropriate Court, since bails are granted by the courts in such cases. ...'

3. Learned counsel further submitted that the copy of similar case bail order namely, Prithiviraj's case bail order has been furnished to the detenu at page 92 as part of the grounds booklet. Learned counsel has further submitted that in Prithiviraj's case, the Public Prosecutor therein had submitted to the Court that the petitioners therein have no previous case. Considering the nature of the offence therein and also the submission made by the Public Prosecutor therein, learned Principal District and Sessions Judge, Thanjavur, granted bail to the petitioners therein. But, the petitioner herein has two adverse case. Hence, the subjective satisfaction arrived at by the detaining authority that there is an imminent possibility of the detenu being enlarged on bail is erroneous decision. Accordingly, learned counsel prayed to allow this petition.



4. Per contra, learned Additional Public Prosecutor submitted that the offences under the similar case and the offences under the ground case are broadly comparable. Accordingly, he prayed to sustain the detention order.

5. We have considered both sides' submissions. Petitioners in the similar case bail order had no previous case. Further, Public Prosecutor therein had not raised any serious objection to grant bail to the petitioners therein. The said aspects weighed the mind of the bail court for granting bail to the petitioners therein. In the case on hand, petitioner has two previous case. Detaining authority himself has stated the details of the adverse cases of the petitioner in the grounds of detention. Hence, the subjective satisfaction arrived at by the detaining authority regarding the 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 detention order.

6. Accordingly, this Habeas Corpus Petition is allowed and the impugned detention order passed by the 2nd respondent dated 14.09.2023



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bearing reference P.D.No.57/2023 is quashed and the detenu Thiru.Thulasi alias Thulasiraman, aged about 43 years, son of Thiru.Periyasamy, 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.)
11.12.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

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

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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ORDER MADE IN
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