



HCP(MD)No.1354 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.(MD)No.1354 of 2023

S.Subbammal

: Petitioner

Vs.

1.State of Tamil Nadu,

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

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

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 M.H.S.Confdl. No. 40/2023 dated 22.05.2023 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., Santhanakumar, aged about 33 years, S/o.Subramanian, 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] was listed before this Bench in the Admission Board on 07.11.2023 and this Bench made the following order:



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'H.C.P(MD)No.1354 of 2023

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

O R D E R

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

Captioned Habeas Corpus Petition has been filed in this Court on 30.10.2023 inter alia assailing a 'detention order dated 22.05.2023, bearing reference M.H.S.Confdl No. 40/2023 [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 mother of the detenu is the petitioner.

3.Mr.N.Pragalathan, 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) and 324 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity], Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2022 and Section 3 of the Indian Explosive Substances Act, 1908 in Crime No.100 of 2023 on the file of Shenkottai 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



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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 a similar case bail order relied on in the grounds booklet furnished to the detenu is not similar in nature.*

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."*

2.As the aforementioned Admission Board order captures all essentials ie., essentials imperative for appreciating this final order, we refrain from setting out the facts again. Suffice to say that the aforementioned Admission Board order dated 07.11.2023 shall now be read as an integral part and parcel of this final order. This also means that the short forms, abbreviations and short references used in the Admission Board order will continue to be used in the instant final order also for the sake of convenience and clarity.

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



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4. Learned Counsel for HCP petitioner elaborating on paragraph No.5 of the admission Board order drew our attention to a portion of paragraph No.6 of the grounds of impugned preventive detention order which reads as follows:

'6. I am also aware that there is real possibility for his coming out on bail in future by filing bail application for the above case since in similar cases bails are granted by the appropriate Courts. I am also aware that in a similar case bail has been granted to Mathankumar in Cr.M.P.No.7687 of 2021 on 18.11.2021 by the Sessions Court, Tirunelveli. I therefore infer that there is real possibility of Thiru.Santhanakumar coming out on bail in Shenkottai Police Station Crime Number 100/2023; since bails are granted by the appropriate courts in such cases.'

5. Adverting to the aforementioned portion of paragraph No.6 of the grounds of impugned preventive detention order, learned Counsel for HCP petitioner submitted that **Mathankumar's** case bail order has been furnished to the detenu as part of the grounds booklet and the grounds booklet was placed before us. We had the benefit of perusing **Mathankumar's** case bail order ie., bail order dated 18.11.2021 in Cr.L.M.P.No.7687 of 2021 on the file of 'Principal Sessions Judge' [hereinafter 'said Sessions Court' for the sake of convenience and clarity].



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6. In aforementioned **Mathankumar's** case bail order on the file of said Sessions Court, learned Counsel drew our attention to a portion of the bail order which reads as follows:

'....The learned Counsel for the petitioners has also stated that compromise talks are also going on. Prosecution has not reported any other cases pending against the petitioner herein. Considering the said circumstances and also considering the facts that,

7. Adverting to the aforementioned portion of **Mathankumar's** case bail order, on the file of said Session's Court, learned Counsel contended that the parameters and determinants which weighed in the minds of the said Session's Court for grant of discretionary relief of bail are very different from the obtaining factual position in the grounds case. Learned Counsel submitted that in **Mathankumar's** case compromise talks were going on and Mathankumar did not have any antecedents ie., the prosecution itself reported to the Court that no other case is pending against Mathankumar but in the case on hand even according to the impugned preventive detention order there are atleast two adverse cases *qua* the detenu. In this view of the matter **Mathankumar's** case cannot be the bench mark or an



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illustrative order for recording subjective satisfaction as regards detenu being enlarged on bail is learned Counsel's say.

8.In response to the aforementioned argument, learned Prosecutor submitted that the alleged offences in **Mathankumar's** case and alleged offences in grounds case are broadly comparable. To be noted, offences in the ground case are captured in paragraph No.3 of the grounds of impugned preventive detention order and the relevant portion reads as follows:

'..... On the complaint of Kowsalya, a case in Shenkottai Police Station Crime Numner:100/2023 under Section 294(b), 324 Indian Penal Code and 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and 3 of Indian Explosive Substances Act, 1908 was registered.

9.Alleged offences in **Mathankumar's** case as can be culled out from the opening paragraph of the bail order on the file of said Sessions Court is as follows:

'Petitioners/accused were arrested and remanded to judicial custody on 08.11.2021 for the alleged offences punishable under Sections 427 IPC and Sec.3 of Explosive Substances Act 1908 @ 427, 436, 294(b), 506(ii) IPC and Sec.3 of Explosive Substances Act 1908 registered by the respondent police, seeks bail.'



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10.This Court has repeatedly held that when it comes to subjective satisfaction being recorded by detaining authority as regards imminent possibility of the detenu being enlarged on bail, it is not a comparison of the alleged offences or alleged charges alone but the parameters and determinants which have weighed in the minds of bail Court for the bail Court to gravitate towards grant of discretionary relief of bail is also very significant. In the case on hand, from the narrative thus far, we find that the parameters and determinants which weighed in the said Session's Court for grant of bail in ***Mathankumar's*** case are so different that those parameters and determinants are not available to the detenu in the ground case. This means that the subjective satisfaction as regards imminent possibility of the detenu being enlarged on bail recorded by the detaining authority in the impugned preventive detention order is clearly impaired. This further means that the impugned preventive detention order deserves to be dislodged in the habeas legal drill. We do so unhesitatingly.



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11.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 22.05.2023 bearing reference M.H.S.Confdl.No.40/2023 made by the second respondent is set aside and the detenu Thiru.Santhanakumar, male, aged 33 years, son of Subramanian, 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.]

06.12.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

MR

Post Script: 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 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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- 2.The District Collector and District Magistrate,
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- 3.The Superintendent of Prison,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

MR

ORDER MADE IN
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