



H.C.P(MD)No.1321 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 04.12.2023

Coram

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

H.C.P(MD)No.1321 of 2023

R.Kavitha

.. Petitioner

VS

1.The State of Tamil Nadu,
Represented 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 District.

.. Respondents

Prayer:- 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 passed in M.H.S.Confdl.No.41/2023 dated 31.05.2023 on the file of the second respondent herein and quash the same and direct the respondents to



H.C.P(MD)No.1321 of 2023

produce the detenu or body of the detenu namely petitioner's husband ie., Ramesh alias Sudukatturamesh, aged about 34 years, S/o.Velladurai, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

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

This 'Habeas Corpus Petition' [hereinafter referred to as 'HCP'] has been filed by wife of the detenu on 30.10.2023 assailing a 'preventive detention order dated 31.05.2023 bearing reference M.H.S.Confdl No.41/2023' [hereinafter 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 second respondent. The Inspector of Police, Puliyangudi Police Station is the Sponsoring Authority [hereinafter referred to as 'Sponsoring Authority'].



H.C.P(MD)No.1321 of 2023

WEB CAM

2. Impugned preventive detention order has been made under '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 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. There are two adverse cases and one ground case. In the first adverse case i.e., Crime No.364/2022 on the file of Puliyangudi Police Station, Anticipatory Bail was granted to the detenu in Crl.O.P. (MD) No.19326 of 2022 on 02.11.2022. The ground case is Crime No. 145/2023 on the file of Puliyangudi Police Station for alleged offences under Sections 341, 294(b), 307 & 506(ii) of The Indian Penal Code, 1860 (Act No. 45 of 1860) [henceforth referred to as 'IPC' for the sake of brevity]. In the ground case, the detenu was arrested and remanded on 06.05.2023. In the second adverse case i.e., Crime No.144/2023 on the file of Puliyankudi Police Station, the detenu was formally arrested



H.C.P(MD)No.1321 of 2023

on 08.05.2023 and produced before the Special Court for exclusive trial of cases under the POSCO Act, Tirunelveli and remanded on 15.05.2023. Impugned preventive detention order was fastened with the detenu based on the aforesaid cases. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to go through the factual matrix of the adverse cases and ground case.

4. On 02.11.2023 when this HCP came up before this Court for admission, the learned counsel for petitioner raised a point that similar case bail order furnished to the detenu in the grounds booklet is not similar in nature. Today, in the final hearing Board, the learned counsel for the petitioner elaborated the said point and drew attention of this Court to a portion of paragraph No.(6) of the grounds of the impugned preventive detention order which reads as follows:

'... I am also aware that in a similar case bail has been granted to Sudalaimani in CRMP No.686/2020 on 09.11.2020 by the Sessions Judge, Special Court for POSCO Act cases, Tirunelveli. I therefore infer that there is real possibility of Thiru.Ramesh alias Sudukatturamesh coming out on bail in Puliyangudi Police Station Crime No.144/2023 since bails are granted by the appropriate Courts in such cases. I am



H.C.P(MD)No.1321 of 2023

aware that Thiru.Ramesh alias Sudukatturamesh is in remand in Puliyangudi Police Station Crime No. 145/2023 and in this case he has not filed any application so far. 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...'

5. The learned counsel for the petitioner submitted that Sudalaimani's case bail order was passed during Covid-19 period and the Public Prosecutor therein had not raised any serious objection for grant of bail to the petitioner therein. The aforesaid situation is not available to the case on hand. Hence, he submitted that subjective satisfaction recorded by the Detaining Authority with regard to the imminent possibility of the detenu being enlarged on bail is erroneous. Accordingly, he prayed to set aside the impugned preventive detention order.

6. In response to the above argument, the learned Additional Public Prosecutor submitted that offences in ***Sudalaimani***'s case and in the case on hand are broadly comparable. The Detaining Authority after



H.C.P(MD)No.1321 of 2023

considering all the materials furnished by the Sponsoring Authority, has passed the impugned preventive detention order which is sustainable.

Accordingly, he prayed to dismiss this HCP.

7. This Court has carefully considered both side submissions. This Court also perused the similar case bail order furnished to the detenu. Relevant portion of the similar case bail order i.e., **Sudalaimani**'s bail order reads as follows:

'On perusal of records, the accused was remanded to judicial custody on 10.09.2020 and he is in judicial custody for 60 days. There is no serious objections raised on the side of prosecution about investigation. Considering the detention period of the petitioner, material part of the investigation might have been over and also considering the nature of offence alleged to have been committed by the petitioner/accused and the facts and circumstances of the case, due to prevailing of Covid-19 epidemic, this Court decides to enlarge the petitioner/accused on bail with condition.'

8. The said **Sudalaimani**'s bail order was passed on 09.11.2020 i.e. during Covid-19 Pandemic situation. Further, learned



H.C.P(MD)No.1321 of 2023

Public Prosecutor therein had not raised any objections to grant of bail to the petitioner therein. Considering the Covid-19 Pandemic situation prevailed then and other circumstances of the case, the learned Sessions Judge granted bail to the petitioner therein. Covid-19 Pandemic situation in legal parlance is from 15.03.2020 to 28.02.2022 *vide* orders of Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.3 of 2020* wherein limitation across the Board was extended and therefore, ***Sudalaimani's*** case would not apply to the case on hand as the impugned preventive detention order has been made on 31.05.2023. This Court has repeatedly held that in cases of this nature, comparison is not restricted to alleged offences but it pertains to determinants / parameters for grant of bail too as 'imminent possibility' regards to probability. Therefore, subjective satisfaction as regards imminent possibility of detenu being enlarged on bail arrived at by relying on a bail order which was passed considering Covid-19 situation, is erroneous approach and non-application of mind of the Detaining Authority. Hence, the impugned preventive detention order is liable to be set aside.



H.C.P(MD)No.1321 of 2023

9. In the result, the captioned HCP is allowed. Impugned preventive detention order dated 31.05.2023 bearing reference M.H.S.Confdl.No.41/2023 made by the second respondent is set aside and the detenu Thiru.Ramesh alias Sudukatturamesh, male aged 34 years, son of Thiru.Velladurai, 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.)
04.12.2023

Index : Yes/No
Neutral Citation : Yes/No
ps/jen

Post Script:

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

(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.



H.C.P(MD)No.1321 of 2023

To
WEB COPY

- 1.The State of Tamil Nadu,
Represented 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 District.
- 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.



WEB COPY



H.C.P(MD)No.1321 of 2023

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

jen/ps

H.C.P(MD)No.1321 of 2023

04.12.2023