



HCP(MD)No.1332 of 2023

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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.1332 of 2023

M.Nambithai

... 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,
Tirunelveli District,
Tirunelveli.

3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

... 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 passed in M.H.S.Confdl No.71/2023 dated 10.07.2023 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely the petitioner's husband Manikandan, aged about 30



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years, S/o. Kethrapaul, 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

ORDER

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

1. This Habeas Corpus Petition (hereinafter referred to as 'HCP') has been filed in this Court on 31.10.2023 by the wife of the detenu praying to quash 'the detention order dated 10.07.2023 passed by the second respondent bearing reference M.H.S.Confdl No. 71/2023' [henceforth referred to as 'impugned preventive detention order' for the sake of brevity and convenience].

2. When the matter came up before this Court 'FOR ADMISSION' on 03.11.2023, learned counsel for HCP petitioner raised a point that the similar case bail order furnished in the grounds booklet furnished to the detenu is not similar in nature. The Admission Board order dated 03.11.2023 reads thus:



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

ORDER

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

Captioned Habeas Corpus Petition has been filed in this Court on 31.10.2023 *inter alia* assailing a 'detention order dated 10.07.2023, bearing reference M.H.S.Candl No.71/2023 [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 wife of the detenu is the petitioner.

3.Mr.N.Prugalathan, 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 506(III) of the Indian Penal Code, 1860 (Act 45 of 1860) [hereinafter 'IPC' for the sake of brevity] in Crime No.76 of 2023 on the file of Moolendradippu Police Station.

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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, Shm-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 a similar case bail order furnished in the grounds booklet furnished to the detenu is not similar in nature.

6.*Prima facie* case made out for admission. Admit. Issue. *Writ 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.

 & 
[M.S.J.] & [R.S.V.J.]
03.11.2023

MR

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3. Today, in the final hearing Board, learned counsel for HCP petitioner elaborated the said argument, drew our attention to a portion of paragraph 6 of grounds of detention and submitted that the detaining authority while recording subjective satisfaction has relied on Sudalaimuthu alias Raja's [henceforth referred to as 'Sudalaimuthu' for the sake of brevity] bail order which was passed by learned Judicial Magistrate-III, Tirunelveli, in Cr.M.P.No.12840 of 2023 on 18.05.2023. In the said bail order, learned Public Prosecutor therein had not raised serious objection to grant bail, on the other hand, learned Public Prosecutor has recorded his formal objection. Since learned Public Prosecutor therein did not raise serious objection, learned Judicial Magistrate granted bail to Sudalaimuthu. Hence, the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of the detenu being enlarged on bail is impaired. Accordingly, learned counsel for HCP petitioner prayed to allow this petition.

4. In response to the above argument, learned Additional Public Prosecutor submitted that offences in the similar case and offences in the ground case are similar in nature and hence they are broadly comparable. The detaining authority after considering all the materials



furnished before him by the sponsoring authority has passed the impugned preventive detention order as per law. Accordingly, he prayed to sustain the impugned preventive detention order.

5. This Court has considered both sides' submissions and perused the impugned preventive detention order. Detaining authority has recorded his subjective satisfaction in Paragraph 6 of grounds of detention. Relevant portion of Paragraph 6 of grounds of detention reads thus:

“... I am also aware that in a similar case bail has been granted to Sudalaimuthu alias raja in Cr.M.P.No.12840/2023 on 18.05.2023 by the Judicial Magistrate-III, Tirunelveli. I therefore infer that there is real possibility of Thiru. Manikandan coming out on bail in Moondradaippu Police Station Crime Number 76/2023; since bails are granted by the appropriate courts in such cases. ...”

6. In Sudalaimuthu's bail order relied on by the detaining authority, the learned Public Prosecutor therein has not raised any serious objection for granting bail to the petitioner therein namely,



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Sudalaimuthu. Hence, learned Judicial Magistrate, considering the facts and circumstances and the other parameters / determinants of the case, has decided to grant bail to Sudalaimuthu.

7. Notably, this Court has repeatedly affirmed that decision to grant or refuse bail is a discretionary power vested with the Bail Court, contingent on various parameters including facts and circumstances, submissions of either side, gravity of offence, possibility of absconding, possibility of repeating the offence, threat to witnesses and roots in society.

8. Hence, in preventive detention jurisprudence, similar case comparison by the detaining authority to evaluate the likelihood of being enlarged on bail, shall not be restricted merely to the alleged offences but shall rather pertain to the other parameters/determinants for grant of bail too.

9. Keeping the above narrative in mind, this Court is of the view that the subjective satisfaction arrived at by the detaining authority as regards imminent possibility of the detenu being enlarged on bail is



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impaired. Therefore, the impugned preventive detention order is vulnerable and deserves to be set aside.

10. Accordingly, this HCP is allowed and the impugned detention order passed by the second respondent dated 10.07.2023 bearing reference M.H.S.Confdl No.71/2023 is quashed and the detenu Thiru.Manikandan, aged about 30 years, son of Thiru.Kethrapaul 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

PKN / JEN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. 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.



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

PKN

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
2. The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.

ORDER MADE IN
HCP(MD)No.1332 of 2023

DATED : 11.12.2023