



H.C.P(MD)No.1425 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.12.2023

Coram

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

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G.Subbulakshmi .. Petitioner/Sister of the detenu

VS

1.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,
Tirunelveli District,
Tirunelveli.

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



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No.106/2023 dated 14.09.2023 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 brother ie., Parvathi Baskaran, aged about 19 years, S/o.Ganesan, 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 M.SUNDAR, J.]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the admission board before this Bench on 21.11.2023 and the following order was made:



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M.SUNDAR, J.

and

R.SAKTHIVELU, J.

ORDER

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

Captioned Habeas Corpus Petition has been filed in this Court on 16.11.2023 *inter alia* assailing a 'detention order dated 14.09.2023, bearing M.H.S.Cenfil No 106 of 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, sister 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 *pro* the detenu is Crime No.237 of 2023 on the file of Ambasamudram Police Station registered under Sections 341, 294(b), 307, 387 and 506(ii) of

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'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity].

4. The aforementioned impugned preventive detention order has been made on the premise that the detainee is a 'Goonda' under Section 2(1) 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, Snuff-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 relied on in the grounds booklet furnished to the detainee is not similar in nature.

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



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


[M.S., J.] & [R.S.V., J.]
21.11.2023

vsm

2.The aforementioned admission board order made by this Bench captures all essentials, i.e., all facts and particulars essential for appreciating this final order and therefore, we are not setting out the same again in this final order. Suffice to say that aforementioned admission board order shall now be read as an integral part and parcel of this final order. This means that abbreviations, short forms and short references used in the aforementioned admission board order will continue to be used in the instant order also for the sake of convenience and clarity.



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3.As would be evident from paragraph 5 of the admission board order, at the time of admission, Mr.N.Pragalathan, learned counsel for HCP petitioner posited his challenge to the impugned preventive detention order on the ground that similar case bail order relied on in the grounds of impugned preventive detention order is not really similar.

4.In the final hearing board today, learned counsel for HCP petitioner elaborating on the above submission drew our attention to a portion of paragraph 6 of the grounds of impugned preventive detention order which reads as follows:

'6.....I am also aware that in a similar case bail has been granted to Nagarajan alias Mohaideen Nagarajan in Cr.M.P.No.8022/2019 on 20.08.2019 by the Principal Sessions Court, Tirunelveli, I therefore infer that there is real possibility of Thiru.Parvathi Baskaran coming out on bail in Ambasamudram Police Station Crime No.237/2023; since bails are granted by the appropriate Courts in such cases.....'

5.Adverting to the aforementioned portion of the grounds of impugned preventive detention order, learned counsel submitted that Nagarajan's case bail order is one where bail Court ie., learned Sessions Judge, Tirunelveli has granted bail by coming to the conclusion that on a perusal of the affidavit filed by the defacto complainant it comes to



light that when he went to Police Station to observe a condition, Police obtained signatures in some papers and registered a case with which he is not connected in any manner. Therefore, the determinant/parameter for grant of bail in Nagarajan's case in short is that it was a put up case. Therefore, comparison of Nagarajan's case with ground case for recording subjective satisfaction as regards imminent possibility of detenu being enlarged on bail is a flawed exercise is learned counsel's say.

6.In response to the aforementioned argument, learned Prosecutor submitted to the contrary. Learned Prosecutor submitted that the offences in Nagarajan's case and ground case are broadly comparable.

7.We carefully considered the rival submissions.

8.This Court has repeatedly held that when it comes to similar case bail orders, it is not merely a comparison of alleged offences but the determinants/parameters which weighed in the mind of the bail Court for grant of discretionary relief of bail is very significant.



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In this view of the matter, we have no difficulty in sustaining the submission of learned counsel for HCP petitioner that the impugned preventive detention order is vitiated as subjective satisfaction recorded by detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. This means that impugned preventive detention order has got vitiated, it has become vulnerable and it has become liable for being dislodged in the habeas legal drill on hand. Therefore, we interfere with the impugned preventive detention order.

9.Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 14.09.2023 bearing reference M.H.S.Confdl.No.106/2023 made by the second respondent is set aside and the detenu Thiru.Parvathi Baskaran, aged 19 years, son of Thiru.Ganesan, 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.)
20.12.2023

Index : Yes

Neutral Citation : Yes

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



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(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.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,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 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.



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

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